

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

IN THE MATTER OF:

	Protest
Administrative and Procedural	Hearing
Rulemakings and Technical	(Status)
Amendment Rulemaking	

November 13, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
HERMAN JONES, Member

MICHAEL SILVERSTEIN, Member

ALSO PRESENT:

Mark Ruzzio, OAG

John Smith, Investigator, ABRA

1 P-R-O-C-E-E-D-I-N-G-S

2 (9:55 a.m.)

3 CHAIR MILLER: Okay, good morning,  
4 everyone. I want to welcome you to the  
5 District of Columbia's Alcoholic Beverage  
6 Control Board. Today is November 13, 2014.  
7 My name's Ruthanne Miller. I'm the  
8 chairperson. And to my far right is Mr. Nick  
9 Alberti. And to my immediate right is Mr.  
10 Hector Rodriguez.

11 MEMBER RODRIGUEZ: Good morning.

12 CHAIR MILLER: To my immediate left  
13 is Mr. Mike Silverstein. Next to Mr.  
14 Silverstein is Mr. James Short. And next Mr.  
15 Short is Mr. Herman Jones. And we have six  
16 members in attendance this morning, and three  
17 members constitutes a quorum.

18 So we're here today for a public  
19 hearing on two rulemakings, administrative and  
20 procedural rulemakings and technical amendment  
21 rulemaking. Please be aware the proceedings  
22 will be recorded by a court reporter. And

1 we're going to be calling you up in panels as  
2 this is a rulemaking proceeding.

3 We are here pursuant to DC Official  
4 Code 25-211(b) to conduct a public hearing and  
5 take comment on the two proposed rulemakings  
6 that make several amendments to Title 23 of  
7 the District of Columbia's municipal  
8 regulations.

9 The administrative and procedural  
10 rulemaking reorganizes Chapter 16 to bring  
11 clarity to the different types of hearings and  
12 the procedures related to those hearings.  
13 Additionally, the rulemaking adds two new  
14 sections to address party standing and party  
15 dismissal as they relate to protest  
16 proceedings.

17 The second proposed rulemaking, the  
18 technical amendment rulemaking makes several  
19 changes to a number of chapters within Title  
20 23 to conform to those corollary changes  
21 contained in the Omnibus Alcoholic Beverage  
22 Regulation Emergency Amendment Act of 2014.

1                   Additionally, this rulemaking makes  
2                   other administrative changes not related to  
3                   the act. I will begin this hearing by calling  
4                   on those witnesses who notified the Agency in  
5                   advance regarding their desire to address the  
6                   Board.

7                   Each witness will be granted five  
8                   minutes to speak. The Board will then obtain  
9                   comments from other interested parties who did  
10                  not register in advance but who wish to be  
11                  heard. If there's additional time at the  
12                  hearing the Board may consider granting more  
13                  time to individuals who have additional  
14                  testimony.

15                  If you have prepared written  
16                  remarks please hand them to Ms. Danetta  
17                  Walker, and she'll ensure they are properly  
18                  filed. After the Board convenes this hearing  
19                  today the record will remain open for  
20                  interested parties to submit additional  
21                  comments.

22                  Okay, so I'm going to call up Panel

1 1, and that is Rod Woodson with Holland &  
2 Knight, Paul Pascal with Pascal & Weiss, P.C.,  
3 Risa Hirao, D.C. Association of Beverage  
4 Alcohol Wholesalers, and Andrew Kline.

5  
6 MALE PARTICIPANT: We might need a  
7 bigger table.

8 CHAIR MILLER: Oh, you can spread to  
9 two.

10 MALE PARTICIPANT: Thank you so  
11 much.

12 CHAIR MILLER: You can spread out,  
13 those of you all

14 MALE PARTICIPANT: You're not used  
15 to that one, are you?

16 CHAIR MILLER: No adversaries today.

17 MALE PARTICIPANT: I hope it doesn't  
18 make you feel uncomfortable.

19 MALE PARTICIPANT: I've been  
20 adversarial my whole career, so.

21 CHAIR MILLER: Okay, we don't we  
22 I was going to say, why don't we start on our

1 far right with Mr. Kline if you're ready. If  
2 you're not ready we can start with - or when  
3 you're ready.

4 MR. KLINE: I am.

5 CHAIR MILLER: Okay.

6 MEMBER JONES: I'm sorry, I just  
7 wanted to make sure - is there any rules, any  
8 time limits, anything that you want to share  
9 with them?

10 CHAIR MILLER: I think you missed  
11 it.

12 MEMBER JONES: I missed it? Okay.

13 CHAIR MILLER: We did say five  
14 minutes.

15 MEMBER JONES: Got it.

16 CHAIR MILLER: I don't seem to - I  
17 don't have that clock right now here with,  
18 that shows the five minutes but -

19 MEMBER JONES: I have -

20 CHAIR MILLER: You're going to be  
21 keeping track?

22 MEMBER JONES: Yes.

1 CHAIR MILLER: Okay.

2 MEMBER JONES: It'll - alarm will  
3 sound when your five minutes are up. Don't  
4 leave the room, just -

5 CHAIR MILLER: And I think what our  
6 procedure will be would be for each of the  
7 witnesses to present their testimony and then  
8 the Board will engage in asking you questions.  
9 Okay. Are you ready?

10 MR. KLINE: Good morning,  
11 Chairperson and all the members of the Board.  
12 As you know, I'm Andrew Kline. I'm here on  
13 behalf of Restaurant Association Metropolitan  
14 Washington, RAMW. RAMW represents over 800  
15 restaurants and restaurant service providers  
16 in the D.C. Metropolitan area, including over  
17 500 restaurants in the District of Columbia.

18 Almost all of our members are  
19 licensed by you for the sale and service of  
20 alcohol for on-premises consumption. These  
21 range from traditional white tablecloth  
22 restaurants to more casual eateries including

1 the trend towards fast-casual eateries that  
2 are obtaining alcoholic beverage licenses.

3 All of these establishments that  
4 are members of our association have in common  
5 a desire to serve and sell alcohol  
6 responsibly, in accordance with your rule and  
7 regulations. We applaud you for bringing  
8 forward the rulemaking and we generally  
9 support it. We have a few comments and a few  
10 concerns which I will discuss.

11 Probably one of our biggest  
12 concerns is the provision concerning cease and  
13 desist orders. There is an amendment to  
14 Section 8 which provides seven circumstances  
15 when the Board might issue cease and desist  
16 orders. We're not sure why this is necessary  
17 or why it came about. But I think it might be  
18 helpful to relate to the Board circumstances  
19 that we had with another agency, and that's  
20 the Department of Health.

21 For years, the Department of Health  
22 would close or interrupt service of an



1 establishment that had an expired business  
2 license. Now to someone not involved in the  
3 business community and not understanding  
4 sometimes how difficult it can be to deal with  
5 government, that may seem, well, you know,  
6 what's the big deal, you have to have a  
7 current business license.

8 But we found there were  
9 circumstances where there were mistakes. We  
10 had one member who sent off their renewal only  
11 to have it returned seven months later with an  
12 additional requirement, and then complied with  
13 that requirement and sent it off, didn't get  
14 their license and the Department of Health  
15 then closed them.

16 What we were finally able to  
17 convince the Department of Health was unless  
18 there's some imminent danger to the public,  
19 compliance with regulatory requirements that  
20 are more administrative in nature should not  
21 lead to a cease and desist. There should be  
22 appropriate penalties, obviously. If one

1 doesn't pay their fees on time late fees are  
2 certainly appropriate. And ultimately, if  
3 someone doesn't do what they're supposed to  
4 do, then the Board has the ability to revoke  
5 the license.

6 But we're very concerned about  
7 situation where they may be a knee-jerk cease  
8 and desist. My office deals with a number of  
9 licensees, as you know, and a number of  
10 businesses in the District. And it's not very  
11 difficult to find that your appropriation is  
12 not in good standing for one reason or  
13 another.

14 DCRA doesn't send notices to all of  
15 the businesses that are required to file the  
16 two-year reports. Now that's no excuse.  
17 You're still required to file the two-year  
18 report. But with all of the requirements and  
19 all of the things that we must do in running  
20 a business, we're concerned that we not just  
21 issue cease and desist orders in a situation  
22 where there's no imminent danger to the

1 public.

2 On your -- there were permissions  
3 concerning service of papers in contested  
4 proceedings. We just have a couple comments  
5 on that. We agree that email service is  
6 appropriate. We think it's the most efficient  
7 way to go. But if one compares it with the  
8 other methods of service that are listed in  
9 the regulations it doesn't rise to the same  
10 level. So we think there should be some  
11 precautions and some safeguards in place.

12 We think the best way to do this is  
13 when a party appears for the first time they  
14 fill out an entry of appearance form, they  
15 consent to service by electronic mail and that  
16 there by a common mailbox from which  
17 communications from the adjudications section  
18 would come.

19 Right now - I know, because I  
20 appear before you - if I get something from  
21 Janea Raines or Jonathan Burman or Martha  
22 Jenkins or others within your agency I know

1       that my office needs to pay attention to that.  
2       Our licensees and those in community  
3       associations and ANCs, when you have a variety  
4       of different names from which emails are  
5       coming it can be a challenge, and it can be  
6       confusing.

7               So we would suggest that you set up  
8       something like ABRAadjudications@dc.gov or  
9       something like that so that people are on  
10      notice when they come in and they say, oh,  
11      you're going to serve me by electronic mail.  
12      They know from what address to expect that  
13      communication. We just think that makes good  
14      common sense to make sure that everyone is  
15      clear from whom they will be receiving these  
16      important communications.

17              We also recommend that the initial  
18      formal pleading such as notices to show cause  
19      be served in the traditional manner, either by  
20      hand or by certified mail/return receipt  
21      requested.

22              Our concern is that ABRA staff or

1 others might go to a Web site, pull an address  
2 and serve it to that email address and it may  
3 not be one that's tended. It may be for  
4 reservations, it may be for some other  
5 function. So we just want to be clear at the  
6 start of the process that there's appropriate  
7 notice.

8           Lastly, I know I'm out time, just  
9 briefly, we're concerned about the provision  
10 that deems an application abandoned or  
11 withdrawn if documentation is not supplied  
12 within 45 days. Sometimes we don't get back  
13 it for 30 days into the process. So we think  
14 if they're going to be timeframes and there  
15 are going to be strict timeframes that there  
16 need to be timeframes for the Agency as well  
17 as for the applicants.

18           We have asked the Agency  
19 repeatedly, is there a date by which we should  
20 expect placards and notices in the DC Register  
21 from the date that we file our application.  
22 And we've never gotten a promise as to what

1       that date is. So we think if there are going  
2       to be timeframes, instead of putting only the  
3       burden on the applicants, there should be some  
4       timeframe work for the Agency and the  
5       applicants that all works together.

6               Thank you. That's all the comments  
7       I have at this time. I did submit written  
8       testimony that may have some other points.

9               CHAIR MILLER: Okay.

10              MR. KLINE: I'm available for any  
11       questions if you like.

12              CHAIR MILLER: Great. Thank you  
13       very much. Okay, we'll get back to you with  
14       questions. Mr. Woodson.

15              MR. WOODSON: Yes, good morning,  
16       Chairman Miller and members of the Board. My  
17       name is Robert Woodson, and I'm a partner at  
18       Holland & Knight, co-chair D.C. Practice  
19       group. I've had the pleasure and honor of  
20       serving as a member of this board as chair for  
21       about four years, some years ago.

22              But I appear before you today,

1 really, to talk about one thing particularly.  
2 I've submitted written testimony that I think  
3 explains in detail what my remarks are about.  
4 But in sum, it's about how to handle renewal  
5 process. I've appeared before the Board on  
6 several occasions in the last couple of  
7 months.

8                   When how to handle evidentiary  
9 submissions in renewal has been, at least in  
10 my view, something of a issue. And I thought  
11 I would revisit that with you today. The  
12 problem that I saw is how to harmonize the  
13 relationship between Provisions 311, 313 and  
14 315 of the code. Those are the provisions  
15 that deal with appropriateness and how to  
16 present evidentiary - how to move evidentiary  
17 submissions in support of whatever the  
18 proposition is.

19                   And the challenge, to me, is that  
20 in the initial issuance of a license the  
21 appropriateness analysis begins, ad initium  
22 begins with a clean slate. And the Board

1 makes a decision regarding whether the  
2 issuance of the license is in conformance with  
3 the statute.

4 When that happens the Board has  
5 made a decision on the appropriateness of the  
6 license under 311. The issue becomes what is  
7 the nature of the evidentiary submission  
8 needed on a renewal. The provision of 313  
9 specifically calls for the Board to look at  
10 additional considerations for renewals under  
11 315. And the reason that was put in there is  
12 because the issuance of a renewal calls into  
13 question a retrospective review of the conduct  
14 of the licensee since it was actually issued.

15 The investigative report becomes a  
16 crucial piece of the Board's analysis. And in  
17 initial issuance of a license the  
18 investigative report give the Board a  
19 perspective on what the environment is like,  
20 the nature of the businesses to be and whether  
21 in their view the license can exist in that  
22 space.



1                   It's the Board's decision on  
2                   whether it's an appropriate action. But the  
3                   investigative report is more of a survey of  
4                   the environment in the renewal. The  
5                   investigative report does something else. It  
6                   does that but it also give the Board a review  
7                   and analysis of the operational conduct of the  
8                   business - what has been the nature of the  
9                   business's violations, if any, what have been  
10                  the operational features of the Board with  
11                  periodic regulatory compliances and so on.

12                 That's a much more - that is a  
13                 very valuable tool when the Board considers  
14                 whether the renewal of a license conforms with  
15                 the statute. I would say that that  
16                 investigative report could be, and often is,  
17                 a crucial feature for the Board's review of  
18                 the evidentiary submissions in a protest  
19                 proceeding.

20                 I took note that in the rules you  
21                 have now called for the investigative reports  
22                 to be matters of evidence irrespective of

1 whether a party actually moves the report into  
2 evidence. In a renewal proceeding I would  
3 offer that that was a very good thing to do.

4 The investigative report really is  
5 not a report from the parties. It is a  
6 function of the staff and the Board itself,  
7 and that should always be a part of the  
8 evidentiary record.

9 That said, what is the nature of  
10 the evidentiary submissions by the parties in  
11 renewals? Because the renewal, the central  
12 question in the renewal is what has happened  
13 from the time the license was issued to the  
14 time of this request for renewal? What has  
15 changed?

16 You've already made a decision that  
17 the existence of the license in that location,  
18 engaging in that kind of business, is  
19 appropriate under 313. Querying, is there  
20 something that has happened in the interim  
21 period that make, that calls into question  
22 that original doubt?

1                   And so the use of the investigative  
2                   report and the nature of what the protest is  
3                   becomes more important. But for - now I  
4                   would also note that both 311 and 315 have a  
5                   presumption of correctness, absent there being  
6                   a protest.

7                   The presumption of correctness in  
8                   311 is qualitatively different because there  
9                   the Board already has its investigative report  
10                  which describes the environment and whether,  
11                  as I said previously, whether the existence of  
12                  the license in this place is appropriate.

13                  In 315, though, the presumption is,  
14                  there's a similar presumption but the  
15                  presumption has a different flavor. The  
16                  presumption there is that, unless something  
17                  has happened in the interim, the license  
18                  should continue in existence. Thus, what  
19                  should the Board be looking to consider? What  
20                  should the Board be looking to determine?

21                  The determination that's of  
22                  importance is what the objection is. So the

1 objection from the protestants become the  
2 starting point for the proceeding. The  
3 investigative report is always heard first.  
4 The parties then have an opportunity to come  
5 forward with evidence.

6 If, in a renewal protest, the  
7 applicant chooses not to come forward  
8 initially in the proceeding that is not a  
9 waiver. That is not in diminution of their  
10 ultimate burden of proof. Because the  
11 ultimate burden of proof is to be taken from  
12 the record as a whole, not on who the  
13 proponent of the particular fact is.

14 So, that said, I would say, and  
15 offer to the Board, that in protest  
16 proceedings it is clearly allowable for the  
17 protestant to open the proceeding because that  
18 narrows the subject of the discussion. That's  
19 the reason we have protest information forms,  
20 is to tell us what the argument is about and  
21 then for the Board to be able to structure its  
22 evidentiary record to answer those questions.

1                   Requiring essentially a rerun of a  
2   311 proceeding in a 315 renewal strikes me as  
3   being wasteful of the Board's resources and  
4   time. That's the essence of my remarks to you  
5   today. I'd be happy to discuss that in  
6   greater detail as the Board may wish.

7                   I would also make one other  
8   recommendation and that is the Board's  
9   decision to have investigative reports become  
10  part of the record in the proceedings,  
11  irrespective of whether the move by a party is  
12  a good thing.

13                  In renewals, particularly, I would  
14  request that investigative reports be made  
15  available at least ten days before the protest  
16  information form is required. Because the  
17  investigative report often changes the nature  
18  of the evidentiary submission desired to be  
19  made by the parties and, indeed, can be  
20  dispositive in any number of cases.

21                  So I think that allowing the  
22  investigative report to be available to the

1 protestants or protest parties in advance,  
2 particularly on renewals, would be very  
3 helpful. Thank you, Madame Chair.

4 CHAIR MILLER: Thank you, yes, and  
5 we'll be back to you in a moment. Okay, Mr.  
6 Pascal.

7 MR. PASCAL: Good morning.

8 CHAIR MILLER: Good morning.

9 MR. PASCAL: I'm here today to  
10 represent the District of Columbia Association  
11 of Beverage Alcohol Sellers. Risa Hirao, my  
12 associate, actually will not be testifying,  
13 but she's here to assist me if there's any  
14 questions.

15 As you know, the wholesalers are  
16 dedicated to a safe environment for the sale  
17 and consumption of alcohol. And we're always  
18 pleased to see that the Board is interested in  
19 updating their regulations.

20 We have concerns - first of all,  
21 I incorporate in my remarks everything that  
22 Mr. Kline and Mr. Woodson said because they

1 are issues also that I strongly believe in.

2 In the proposal, 23 DCMR 213.1  
3 Exemption for Licensing Requirements you've  
4 created an exemption now for either host zone  
5 premises or the operator of the premises. I  
6 suspect what we think the word host and  
7 operator are sort of ambiguous.

8 CHAIR MILLER: What --

9 MR. PASCAL: And I guess our concern  
10 as a wholesaler is who can we sell to? Are we  
11 creating a new category that we can sell to  
12 these persons or not? Certainly, we're  
13 allowed to sell to consumers white wines and  
14 beer. As a general rule, we don't aim to sell  
15 to the consumers because we're in the  
16 wholesale trade. So this gives us some pause  
17 as to where the products would come from and  
18 the ability to trace the product.

19 CHAIR MILLER: I'm sorry, could you  
20 repeat the provision you're referring to?

21 MR. PASCAL: 23 DCMR 213.1.

22 CHAIR MILLER: Thank you.

1 MR. PASCAL: The category says,  
2 Exemption for Licensing Requirement.

3 CHAIR MILLER: Okay.

4 MR. PASCAL: In terms of the  
5 timeframes, we've made some proposals that the  
6 protest may be or your application may be  
7 desist in 45 days or 15 days. Bear in mind  
8 that the applicants have, many times, made  
9 significant financial commitments. Many times  
10 they come in and try to do things very early  
11 because they know they're going to have  
12 protests or what have you. They want to get  
13 the license application in.

14 And we feel that the timeframes  
15 that you've set are really unreasonable,  
16 especially if you're dealing with anything  
17 that deals with licensing or some other issues  
18 where you're dependent on another agency. And  
19 this will come up later in another discussion.

20 Under Bottle Service, Chapter 7,  
21 that's 23 DCMR 7 21.1, this provision actually  
22 came about because of comments that I brought



1 to the Board's attention. You have some  
2 products like Grey Goose, which is a very  
3 expensive product, and some, especially the  
4 clubs and some of the other issues, bring out  
5 a bottle that's already uncapped and we  
6 believe that there was gray market product in  
7 those bottles, or it's not really Grey Goose  
8 in there.

9 So the provision here is that it  
10 has to be capped when brought to the table,  
11 which is what most wines are anyway when  
12 they're bought and opened at the table.  
13 However, we think it needs to be broadened.

14 You list as restaurants, taverns,  
15 nightclubs, hotel or multi-purpose facility  
16 but you fail to cover caterers and common  
17 carrier licenses. And caterers have the same  
18 issue, so we think you just need to expand the  
19 coverage to those additional parts of the  
20 license.

21 Now on the terms of the cease and  
22 desist orders that Mr. Kline was talking

1 about, in a sense, I generally support what  
2 you're trying to do. But on the other hand,  
3 you're overlooking the real world out there in  
4 terms of licensing.

5 I'll give you an example. Harris  
6 Teeter merely changed its license, its  
7 category from a corporation to an LLC. This  
8 took months to get done because, first, they  
9 had to go to get their occupancy permit  
10 changed. And then there was issues dealing  
11 with that.

12 Then they had to get their health  
13 inspections, and many times they were  
14 canceled, and then finally had to get the  
15 business license. That's the process. That  
16 could take a long time. And if we had these  
17 restraints - we filed the application to make  
18 this change, but it took months to accomplish  
19 because of other things. And they were  
20 technically and LLC. There could be issues  
21 there.

22 I had experience with the

1 corporation office. I'm a registered agent  
2 for numerous entities. Every time there's a  
3 renewal they send me their list. And we tried  
4 to go through their list with my list but many  
5 times they don't send me all the information  
6 for renewals.

7 And it's possible that something  
8 would slip by and an applicant may miss not -  
9 or their license already and not know that  
10 they've been delisted. So there certainly  
11 should be some notice provisions and a right  
12 to hear on any of these issues that you've  
13 listed here.

14 And quarterly statements, you've  
15 now incorporated some words, sufficient  
16 documentation, to allow the Board to verify.  
17 I'm not too certain what sufficient  
18 documentation is. Sufficient to me may be one  
19 thing, but to you it's another, so I think you  
20 need to - if you're going to use the word  
21 sufficient what you want to do, maybe you have  
22 to have a checklist of what you need for a

1       licensee to have available for you. But I'm  
2       a little concerned with the use of that word.

3               And finally, I don't necessarily  
4       understand the rationale is this party of  
5       dismissal where if the case is dismissed and  
6       then not reinstated, then they were asked for  
7       renewal, are you asking for \$1,000 fee for  
8       renewal? I don't understand the rationale.  
9       I don't know whether you're trying to punish  
10      someone for not doing something or where this  
11      comes from.

12             There could be some rational reason  
13      it didn't happen, so it seems to be more  
14      punitive in nature, and I don't understand the  
15      Board's justification. With that, I'll close.  
16      And, like I say, I incorporated the  
17      gentleman's remarks before me. And I'll be  
18      glad to answer any questions.

19             CHAIR MILLER: Okay, thank you.

20             MS. HIRAO: Madame Chair, if there  
21      is time, I'd like to address two additional  
22      points in our Association's testimony if the

1 Board would permit.

2 CHAIR MILLER: Okay.

3 MS. HIRAO: Okay, and this goes to  
4 the exemption for licensing requirement. We  
5 mentioned that we had -

6 MEMBER JONES: Just for the record,  
7 I think everyone knows for sure who you are.

8 MS. HIRAO: Oh, should I state my  
9 name?

10 MEMBER JONES: But if you could  
11 just, since you're giving testimony, if you  
12 could state your name.

13 MS. HIRAO: My name is Risa Hirao,  
14 H-I-R-A-O, associate counsel and vice  
15 president for DC Association of Beverage  
16 Alcohol Wholesalers.

17 MEMBER JONES: Thank you.

18 MS. HIRAO: And the proposed rules  
19 for 23 DCM 213.1, if a wholesaler is permitted  
20 to sell to these, I guess some hosts that are  
21 exempt from the licensing requirement, I think  
22 to protect the wholesaler from a potential

1 violation of 25-102(a), which is selling to an  
2 unlicensed party, perhaps maybe the Board can  
3 craft an affidavit for that party that's  
4 claiming the exemption to sign so as to  
5 protect the wholesaler. That's one primary  
6 concern.

7 And also, for bottle service, the  
8 way I kind of understand it is the bottle is  
9 brought to the table. And I'll throw a  
10 hypothetical to the Board to ponder on. What  
11 if there is a minor at the table? So the  
12 question is who would be serving the wine?  
13 Would it be the restaurant staff or would it  
14 be a person who's seated at the table?

15 And what if it is the person who's  
16 seated at the table and, by accident or  
17 intentionally, they serve the minor alcohol?  
18 Would the actions of that customer extend to  
19 the retailer? So those are things maybe the  
20 Board can maybe fine tune in this bottle  
21 service rule. And I conclude my comments.  
22 Thank you very much.

1 CHAIR MILLER: Great. Thank you.

2 Okay, so why don't we start with - since the  
3 topics are pretty different, why don't we  
4 start with questions for Mr. Kline first and  
5 then go to questions for Mr. Woodson and down?

6 Are there questions for Mr. Kline  
7 from board members? I have a few. So with  
8 respect to the cease and desist orders -

9 MR. KLINE: Yes.

10 CHAIR MILLER: Okay, so I think that  
11 your concern is that there are drastic actions  
12 being taken, maybe, for an administrative  
13 issue.

14 MR. KLINE: Yes.

15 CHAIR MILLER: Okay, so you  
16 recognize there's at least a notice provided  
17 in the process? They don't just show up at  
18 the door and close them down, right?

19 MR. KLINE: Yes, but, particularly  
20 in those sections that deal with other  
21 agencies, I mean, the - look at me. The  
22 competence of agencies in the District of

1 Columbia varies widely. And sometimes it's  
2 not so easy to get something resolved with a  
3 particular agency. And the agency may not  
4 even be correct. So I get concerned.

5 And I guess I wonder what the  
6 policy justification is for layering on. I  
7 mean, if the Agency - let's take the Health  
8 Department example. If DOH has issued a cease  
9 and desist with respect to sale of food  
10 products, why do we need another cease and  
11 desist? I mean, what's really the point?

12 With respect to the corporations  
13 issue, that's really a technical matter. And  
14 I dare say, and I hate to say this on the  
15 record but I will, I bet you that ten percent  
16 of licensees, their corporation is not in good  
17 standing. I mean, it gets caught on renewal  
18 and it gets fixed but corporations has not  
19 been notoriously excellent at making sure that  
20 people, you know, get notices and renew.

21 So, I mean, we just get concerned  
22 when we're dealing with other agencies. I



1 mean, I think the payment of fine issue and  
2 the payment to you is easy because we can  
3 resolve it amongst ourselves. We either paid  
4 or we didn't.

5 But I also think that the Board's  
6 current practice, which I also applaud, of  
7 including in show cause orders and have taken  
8 the practice of doing it on the record - hey,  
9 you don't pay by the deadline, you're going to  
10 get suspended. And I think that's a much  
11 better approach than just putting it in a  
12 regulation.

13 Because then we've, you know, it's  
14 in the order, we usually say it on the record  
15 and the licensee's very clear or should be  
16 very clear if they don't pay by the time  
17 they're going to get suspended rather than  
18 having a, you know, another provision in the  
19 regs.

20 CHAIR MILLER: Okay, that's a good  
21 distinction to make. My other question goes  
22 to the regulation that's dealing with

1 applications which have inactivity and that  
2 there's a certain deadline by which they're  
3 deemed withdrawn or abandoned.

4 I understand that you raised the  
5 issue that there should be some parallel dates  
6 or corollary dates for agency actions, when  
7 they should be taken. But do you have an  
8 issue with putting some kind of finality with  
9 respect to applications that haven't been  
10 acted on or things like that?

11 MR. KLINE: I'm not sure that I  
12 fundamentally do, but I'm not sure that it  
13 needs to be a blanket rule. I don't - just  
14 like I don't sit where you sit, you don't sit  
15 where I sit. So I don't know what the problem  
16 is -

17 CHAIR MILLER: Mm-hmm, okay.

18 MR. KLINE: - that we're trying to  
19 address here. So it's a little difficult for  
20 me to offer a solution when I'm not exactly  
21 sure, you know, how many applications  
22 languish. I mean, is this really a big

1 problem or is this, you know, somebody just  
2 thought it was a good idea? I don't know -  
3 maybe it is a big problem.

4 But from where I sit, I don't know  
5 that, so it's a little difficult for me. And  
6 maybe we should have a record in terms of on  
7 a lot of these issues, you know, what's the  
8 problem we're trying to address here.

9 CHAIR MILLER: Okay.

10 MR. KLINE: Is there really a  
11 problem or did somebody just think it was a  
12 good idea. And good ideas are fine but, you  
13 know, as I've gotten older, I've found that  
14 less rules are probably better than more  
15 rules.

16 Because more rules are more things  
17 that, you know, don't get forced and don't get  
18 done. And, you know, there should be thought  
19 given to, well do we need this --

20 CHAIR MILLER: Sure. Sure, and -

21 MR. KLINE: - for a policy means.

22 CHAIR MILLER: There was, I'm sure

1       there was thought for every change. It just  
2       may not be on the record. Good point.

3               Would a notice provision make you  
4       more comfortable or not necessarily? For  
5       instance, you know, getting a notice that your  
6       application's going to be deemed withdrawn  
7       pursuant to this regulation unless you take  
8       action on it?

9               MR. KLINE: Yes, a notice always  
10       makes me more comfortable. And I think that,  
11       I mean, in real life what should happen is the  
12       examiner should say, hey, we X, Y and Z.  
13       Because, I mean, that's the issue. I mean, we  
14       do have issues at the applications phase in  
15       terms of getting information - what are you  
16       missing.

17               I mean, sometimes our office, we  
18       try to follow up and say, hey, we want to  
19       confirm that you have everything. And then  
20       the application doesn't get looked at until it  
21       gets to be the time we're saying we're ready  
22       to open, we need our license.

1                   And then somebody decides to look  
2                   at and then they say, oh, we need A, B, C, D  
3                   and E - it's like, well, where have you been  
4                   for six months? What haven't you told us this  
5                   earlier? So, I mean, we think this cuts both  
6                   ways.

7                   CHAIR MILLER: Okay.

8                   MR. KLINE: And we look at the  
9                   Agency and say we need you to communicate with  
10                  us.

11                  CHAIR MILLER: Okay, good. Are  
12                  there other questions for Mr. Kline?

13                  MEMBER JONES: Just real quick.

14                  CHAIR MILLER: Go ahead, Mr. Jones.

15                  MEMBER JONES: You made a - during  
16                  your testimony you made reference to there  
17                  should be a mutually binding time for feedback  
18                  in terms of we're expecting you to do  
19                  something in a certain period of time, there  
20                  should be a corresponding requirement that the  
21                  Agency has to give you feedback regarding that  
22                  same matter. Is that - did I capture - did

1 I hear that correctly?

2 MR. KLINE: Yes.

3 MEMBER JONES: Okay.

4 MR. KLINE: What I'm saying is if  
5 we're going to impose timeframes -

6 MEMBER JONES: Yes.

7 MR. KLINE: - then they should be  
8 imposed all around. And we should be, just  
9 like we're now - and it took an act of  
10 counsel to do it -

11 MEMBER JONES: Right.

12 MR. KLINE: - we are now able to  
13 confidently tell applicants that, no matter  
14 how big the fight is, no matter how big the  
15 issue is, on a new application you will have  
16 a decision in seven months, okay? We're able  
17 to tell people that with confidence.

18 MEMBER JONES: Right.

19 MR. KLINE: The Board has been very  
20 good about sticking to the statutory  
21 timelines. If someone says, when we file our  
22 applications, when are we going to get our

1 placards, I can't tell them anything with much  
2 confidence at this point.

3 MEMBER JONES: Got it. Understood.  
4 Thank you very much.

5 CHAIR MILLER: Okay, any questions  
6 now for Mr. Kline? All right, how about for  
7 Mr. Woodson? Okay, I have a lot of questions  
8 for you, Mr. Woodson. And I do want to put on  
9 the record that Mr. Woodson did file a motion  
10 and protest case raising some of these same  
11 issues with respect to burden of proof and  
12 renewals, so we've certainly been thinking  
13 about that issue.

14 I guess the first one I want to ask  
15 you is your recommendation a change in  
16 procedure than what's in the regulations. And  
17 I'm wondering if you had thoughts about that  
18 when you were chair of this board and had  
19 renewals. Did you ever have renewals before  
20 you?

21 MR. WOODSON: Actually, I did have  
22 a thought about that. There have been some

1 incremental changes in how the Board handles  
2 renewals at the staff level since my time, a  
3 few years ago now.

4 The most important change has been  
5 the usefulness of your investigative reports.  
6 Our investigative reports, during the time I  
7 was chairman, had a lot to be desired. They  
8 were often incomplete, more often than not.  
9 There wasn't any consistency with the way the  
10 reports were prepared and the reports often  
11 were not timely at all.

12 If we got written reports, 90  
13 percent of the time, I would have been  
14 thrilled. We usually got oral reports  
15 throughout the course of the hearing. And so  
16 the standardization and the usefulness of the  
17 investigative reports has changed a lot, at  
18 least in my thinking, about what protests or  
19 renewals will call for.

20 Because at that time, absent having  
21 some real information about the licensee and  
22 his operation, we had to hear all of that



1 again in an affirmative way. So the  
2 improvement in the investigative reports has  
3 gone a long way.

4 CHAIR MILLER: Okay. So basically,  
5 I mean, one of my questions is, procedurally,  
6 how this would work. I mean, you talked about  
7 going first with this report, which we do  
8 anyway. But then what would change would be,  
9 as I understand it, the protestants would go  
10 next and set forth what they see the issues  
11 are with respect to peace, order, quiet or  
12 appropriateness in general.

13 And then the applicant would  
14 respond to that, which sounds efficient. But  
15 how would that work with respect to any party  
16 having rebuttal? You know, normally the  
17 application goes first and then the protestant  
18 goes second and applicant gets rebuttal.

19 Do you see that there would no  
20 longer have that normal contested case setup  
21 and it would just be  
22 investigator/protestant/applicant? Have you

1 thought that through?

2 MR. WOODSON: I've been thinking  
3 about it, frankly. Since I wrote this  
4 testimony that was a point that I started to  
5 consider, the value of rebuttal testimony.

6 Actually, it's, in a practical  
7 sense, I don't see it being all that  
8 different. While the ultimate burden of proof  
9 remains on an applicant, what you're really  
10 looking to do is to develop an evidentiary  
11 record on 313 issues.

12 And if there isn't - if the  
13 protestant begins first and the applicant  
14 responds with rebuttal and affirmative  
15 testimony, then I don't really see the  
16 challenge in allowing the protesters to have  
17 another shot. I mean, were talking about  
18 being fair.

19 CHAIR MILLER: Mm-hmm.

20 MR. WOODSON: And so I don't really  
21 have a problem with that. What I'm trying to  
22 encourage is the - and that is narrowing the

1 scope of the proceeding to really the problem  
2 at hand.

3 We have - the hearing that you  
4 spoke about, Chairman Miller, took a very long  
5 time. But that's not the first time they've  
6 taken a long time. In my own experience  
7 during, when I was on that of the desk, I had  
8 12-hour hearings and 11-hour hearings. And it  
9 became a burden for everyone, particularly for  
10 you all who volunteer of your time.

11 MALE PARTICIPANT: Interesting.

12 MR. WOODSON: If, by looking at  
13 renewal proceedings as narrowed to what the  
14 protest issues are, I think you save everyone  
15 time and energy and heartburn. The  
16 protestants will know what it is that we are  
17 talking about. The applicant will know what  
18 it is that they have to address, the Board  
19 will know what it has to decide.

20 So whether rebuttals should be  
21 permitted by the protestant, I leave that at  
22 the Board's discretion. I don't think that

1       it's a problem. And oftentimes then, in a  
2       measure of fairness, it might be appropriate,  
3       to borrow a phrase.

4               CHAIR MILLER: So, I mean, I don't  
5       know if these are exact fits under traditional  
6       APA but would you say that in that case, then,  
7       the protestants become the proponents?

8               MR. WOODSON: Well, they become the  
9       proponents in the sense that they propose the  
10      issues. It's not that they become - the  
11      proponent under the APA really goes to the  
12      idea of who carries the ultimate burden of  
13      persuasion, and that still remains.

14              CHAIR MILLER: Right.

15              MR. WOODSON: The issue, the focal  
16      point I'm encouraging is what is the issue  
17      that we're talking about. If there were no  
18      protests there would be no issues.

19              CHAIR MILLER: Mm-hmm.

20              MR. WOODSON: If there no protests  
21      either in a 311 or 315 proceeding there  
22      wouldn't be any issues. But in a 315

1 proceeding, particularly - particularly,  
2 there, you're talking about what are the  
3 operational problems that have arisen from the  
4 beginning of the license period?

5 Why should the Board concern itself  
6 with everything else if the investigator -  
7 and this brings us back to the investigative  
8 report - if the investigative report reveals  
9 enough information for the Board to assess the  
10 operation or compliance of the licensee then  
11 a full-blow 311 proceeding from the applicant  
12 seems to be duplicative.

13 MR. KLINE: If I may add on to  
14 that? I mean, I think the point is this - we  
15 can talk about legal burdens and we can talk  
16 about what's a law and everything else, but  
17 from a practical standpoint, when we come into  
18 this room what you want to know about is why  
19 the protestants don't want the license  
20 renewed, what are the specific issues that  
21 relate to that.

22 Whereas the licensing scheme, obviously,

1       contemplates a lot more, and I think what Mr.  
2       Woodson is saying is let's focus on the issues  
3       at hand. If the protestants have an issue  
4       with noise, for example, then, you know, why  
5       are we talking about parking?

6               I think, practically, the Board has  
7       done that. I mean, I think that, because from  
8       a practical standpoint, we're not going to be  
9       talking about parking if nobody has an issue  
10      with parking. So I think we're there. It's  
11      just a question of, procedurally, might there  
12      be a better way to do it.

13             CHAIR MILLER: Okay. And,  
14      procedurally, it would be still a little bit  
15      different if - and we've heard this in some  
16      cases where the applicant says I'm just going  
17      to do rebuttal. So that's what changes. Do  
18      you think it's still a better procedure to  
19      have the expectation or the ordering of the  
20      protestants to go first, in general?

21             MR. WOODSON: I think the Board  
22      ought to leave its options open, frankly. I

1 don't think that it's necessary to make a hard  
2 and fast rule that the applicant must go first  
3 in every kind of proceeding because, again,  
4 the objective of the Board is to develop its  
5 evidentiary record.

6 If the applicant chooses to use  
7 rebuttal to provide its evidentiary record,  
8 that does not obviate its obligation to be  
9 able to provide persuasive evidence on the  
10 record as a whole.

11 CHAIR MILLER: Mm-hmm.

12 MR. WOODSON: I made a point in my  
13 testimony that the standard for substantial  
14 evidence is taken from the record as a whole,  
15 and it doesn't matter who presents it. If the  
16 protestant provides testimony in its  
17 proceeding that actually substantiates  
18 everything that the applicant would want, why  
19 argue about that?

20 If, by -- in parallel, if the  
21 investigative report has the same effect, why  
22 say it again?

1 CHAIR MILLER: Mm-hmm. Okay.

2 MR. WOODSON: If I might --

3 CHAIR MILLER: Yes.

4 MR. WOODSON: - Chairman Miller.

5 CHAIR MILLER: Mm-hmm.

6 MR. WOODSON: I might also say that  
7 I didn't come down here to reargue the case  
8 that we had a couple of months ago, but it  
9 just highlighted to me an issue that I thought  
10 is worth revisiting with the Board.

11 CHAIR MILLER: No, I think it's an  
12 interesting point that - we've got a lot of  
13 people in here and if anybody else would want  
14 to address it that would be good because,  
15 personally, I think these hearings do take an  
16 awfully long time and I don't, you know, know  
17 why it should take six hours for some of these  
18 hearings.

19 And if there's a way that we can  
20 make them more efficient, you know, I'd be  
21 open to that. So, okay, I don't suppose you  
22 know of any other regulatory bodies that have



1 a similar type of adjudicatory system?

2 MR. WOODSON: I really haven't done  
3 that kind of survey.

4 CHAIR MILLER: Mm-hmm.

5 MR. WOODSON: I've tried to address  
6 the issues that you all face. And primarily  
7 it is being able to streamline a renewal  
8 protest because that seems to gather a lot of  
9 interest in the community.

10 CHAIR MILLER: Okay, Mr. Alberti.

11 MEMBER ALBERTI: I sort of want to  
12 ask - I'm really confused by what I'm hearing  
13 as your perception of what your burden is in  
14 a renewal because - and maybe you can clarify  
15 what you believe your burden is because if you  
16 look at the process as a whole you start with,  
17 usually there's some discussion before between  
18 the parties. And if there isn't there is  
19 mediation.

20 So you start with mediation and the  
21 parties have sat down and if they're honest  
22 brokers they have discussed some of the

1 issues. Then you have, before you, you have  
2 the investigative report. And always in the  
3 investigative report, one of the things that  
4 the investigators do is they interview the  
5 parties to find out what are the issues. And  
6 that's very helpful to us so we have some idea  
7 of what we're focusing on as we're going into  
8 the hearing.

9           So you seem to be saying to me that  
10 your perception is that you have to cover all  
11 your bases - you know, parking if that's not  
12 an issue and the property values, if that's  
13 not an issue and, you know, trash if that's  
14 not an issue.

15           But I don't understand why you have  
16 that perception when you have before you the  
17 ability to know what the issues are. So am I  
18 missing what your perception of your duties  
19 are here, what you need to bring forth?

20           MR. WOODSON: The importance of the  
21 - the investigative report had become a  
22 crucial thing in renewals, much more so, I

1 believe, than in reg 313, Initial License and  
2 Proceedings.

3 The investigative reports are not  
4 really, have not been as timely available for  
5 other things. One of the reasons I suggested  
6 the investigative report be completed at least  
7 with some time certain before the protest  
8 hearing date - or not the protest but the  
9 submission of the protest information form.

10 One of the reasons is for that very  
11 purpose because the parties don't - the  
12 investigative - let me put it another way.  
13 The investigative report is sort of a third  
14 party, not involved in merits, not - it's a  
15 statement of what is going on without bias.  
16 That's the value of that.

17 Those reports have a material  
18 impact on the way the parties address one  
19 another in pretrial discussions. If the  
20 investigative report does not reveal anything  
21 that gives support to the protestant's  
22 argument then what is the protestant argument

1 about?

2 And those kinds of things do serve  
3 to narrow the issues. But I'm also mindful  
4 that often protests protest everything. It's  
5 not - it is the sophisticated protestant's  
6 that narrow the issues.

7 But often the protest language is  
8 all three standards.

9 MR. WOODSON: Yeah.

10 MEMBER ALBERTI: And so, but what  
11 is really at issue is trash removal. What is  
12 really at issue is parking some fashion. But  
13 wind up having to argue about everything.  
14 What is the value of that?

15 So, yes, the pretrial, the  
16 prehearing activity serves to narrow things.  
17 But then, sometimes they don't. And with that  
18 said, I do think that the Board improves its  
19 ability to control the record, to control the  
20 development of its evidentiary submissions by  
21 allowing different procedures, a different  
22 type of proceeding given the case at hand.

1 MR. PASCAL: Well, would you  
2 advocate like for a pretrial procedure so that  
3 the issues would be narrowed? Because you're  
4 remiss in your duty as an applicant or as a  
5 licensee's attorney if you don't do all of  
6 those. You know, they're going to do a  
7 shotgun and raise a protest and everything  
8 but, ultimately, when they come on their side  
9 they may only focus on one. But if you  
10 haven't covered everything, you don't know,  
11 necessarily, what they're going to come out  
12 with in their testimony.

13 MR. WOODSON: Well, I have a  
14 response to that. When you shotgun the issues  
15 but you don't provide an evidentiary support  
16 for those issues, shotgun, I don't think those  
17 issues are worthy of the Board's  
18 consideration. And I would move to dismiss  
19 them.

20 Because the purpose of the  
21 proceeding is to discuss the issues at hand.  
22 If it's not an issue, if there's been no

1 testimony or evidentiary submission on them,  
2 why are we spending time in the record on  
3 them?

4 CHAIR MILLER: Let me - oh, go -  
5 are you finished with - when you're finished

6  
7 MR. WOODSON: I am. I am finished.

8 CHAIR MILLER: Oh, okay. So I -  
9 oh, could I just follow up on this a bit? You  
10 know, I think part of our new rules also  
11 references -

12 MR. WOODSON: I'm sorry, Chairman,  
13 I can't

14 CHAIR MILLER: Part of our new  
15 rules, I believe, references the protest  
16 information forms and exhibit forms that we've  
17 been developing this year and expanding on  
18 somewhat for requirements, that issues and  
19 witnesses and exhibits be identified. Do you  
20 all have a comment with respect to whether  
21 that has been helpful, is helpful to preparing  
22 for the hearing?

1 MR. WOODSON: Yes, particularly if  
2 you get it in time.

3 CHAIR MILLER: Mm-hmm, okay.

4 MR. WOOD: Yes, as I noted, they  
5 have great value. But they have less value  
6 when they don't arrive in a timely manner. So  
7 receiving the investigative report at or at  
8 the time the protest information form is filed  
9 or after really doesn't help us.

10 CHAIR MILLER: Mr. Silverstein?

11 MR. SILVERSTEIN: Yeah, I think  
12 this is a critical issue. And it also  
13 involves the question, how do we use our  
14 staff. We have, at any time, between 15 and  
15 20 investigators. They work until 4 o'clock  
16 in the morning at times. They're handling  
17 thins, often, that are far more important  
18 this. If there has been an  
19 incident or something that involves an eminent  
20 threat to public safety or something of that  
21 sort.

22 The question is how much work we

1 can force them to do and at what point in time  
2 it is best to do these things. It would be  
3 certainly convenient to the parties if these  
4 reports were done 17 days prior to a protest  
5 hearing.

6 It would make life easier. It  
7 would focus the protest hearing. But how man  
8 protest are, in fact, dropped in that 17 days  
9 because both parties look at the deadline, and  
10 they've got the gun to their head and they  
11 say, we're not going to deal or bargain three  
12 weeks, four weeks out and wait.

13 And then we have the staff working  
14 on these excellent reports that are sometimes  
15 40 and 50 pages in length with, you know,  
16 pictures and circles and arrows and all of  
17 that stuff. And you find that they're not  
18 needed. How do we reconcile this? And if we  
19 don't have these done 17 days in advance is  
20 there some way that we can make some minor  
21 change to the PIF, to allow you to submit  
22 evidence based on what was in the report that



1       you haven't seen yet?

2                   I know I'm all over the board on  
3       this, Rob, but you know where I'm going from.

4                   MR. WOODSON: Yeah, I do. Well,  
5       first, there's no clean tradeoff. If you  
6       choose one path, there are followings on that  
7       path. If you choose another path you may fall  
8       into the pit.

9                   MR. SILVERSTEIN: Agreed.

10                  MR. WOODSON: There's always a  
11       challenge on either way. That said, the point  
12       you raised about the value of your staff time  
13       is something I appreciate completely. There  
14       is - it might be - it may be - it may be  
15       that some sort of preliminary investigative  
16       report would be helpful, some form of  
17       preliminary investigative findings before the  
18       full-blown report is provided to the Board's  
19       record.

20                  I leave that to your good judgment.  
21       But that would certainly help the parties  
22       because what I'm trying to - the objective

1 I'm trying to achieve here is for the Board's  
2 hearing time to be compressed. And at the end  
3 of the day I have to ask who's time, in your  
4 mind, is most valuable on a relative scale,  
5 right, if you will?

6 I would say that your time here is  
7 extremely valuable and that the problems that  
8 we have are we have so much work and so little  
9 time. So I don't see being able to compress  
10 the amount of work that has to be achieved.  
11 So let's compress the amount of time that it  
12 takes to do it.

13 MR. SILVERSTEIN: Mm-hmm. So would  
14 it be possible to add something to your PIF  
15 that, say, we reserve the right to bring  
16 witnesses to discuss or rebut the findings in  
17 the investigative report that we have not yet  
18 seen or something to that effect?

19 MR. WOODSON: Well, certainly, if I  
20 were counsel at a proceeding like that I would  
21 have to say that, that if we receive the  
22 investigative report after the time of

1 submission of the PIF, that I would want to  
2 have some opportunity to address the issues in  
3 the investigative report.

4 That's always an exigency that we  
5 have to deal with. But in the normal course  
6 of events, why do that? That, to me, is an  
7 extraordinary relief rather than a regular  
8 source of relief.

9 MR. SILVERSTEIN: Thank you.

10 MR. WOODSON: Sure.

11 MR. KLINE: Let me state

12 CHAIR MILLER: Yes, go ahead.

13 MR. KLINE: - what I think is the  
14 obvious. In terms of the times of the  
15 hearings -- the Board may not like this - we  
16 get 90 minutes, they get 90 minutes. The only  
17 people that don't have a time limit

18 CHAIR MILLER: Mm-hmm.

19 MR. KLINE: - are you guys. So,  
20 like the counsel and like other bodies, you  
21 may wish to consider that in question rounds  
22 there be time limits among board members. I

1 mean, you know, the 90 minutes is the 90  
2 minutes. And only I've come, gone over it or  
3 come close to it once.

4 But the hearings stretch out much  
5 longer than three hours. And it's not us  
6 because Jones over there is really good with  
7 his little stopwatch. My two cents, for what  
8 it's worth.

9 CHAIR MILLER: Okay, Mr. Alberti.

10 MR. ALBERTI: I just want to sort  
11 of sum up, what I'm hearing, what you're  
12 saying, Mr. Woodson - Mr. Kline, and  
13 everybody's saying is that you'd like some  
14 mechanism, some way of knowing, as you come to  
15 the hearing, what the issues are and more  
16 specifically than you sometimes do now.

17 CHAIR MILLER: Mm-hmm.

18 MEMBER ALBERTI: And I would say  
19 that would be beneficial to the Board also.  
20 So I think that's what you're really grasping  
21 at here is to know what your target is when  
22 you come to the hearing more than you do now.

1 Am I correct?

2 MR. WOODSON: I would say, yes. I  
3 would say if I had to make a straight out  
4 about a simple straight - the short answer  
5 is yes. I'm always one that pays attention to  
6 how the record is developed because that's  
7 where the decision is.

8 And there are occasions when -  
9 frankly, there are occasions - I agree with  
10 my colleague, Andrew Kline, about the time the  
11 Board takes in asking questions.

12 On the other hand -- on the other  
13 hand, I think there's a great value in that  
14 because the Board often asks the questions  
15 that needed to be asked and that the parties  
16 miss. And so I'm reluctant to jut say, don't  
17 - you know, you've got two minutes, and  
18 that's the end of that. I'm reluctant to do  
19 that.

20 I would also add that having  
21 allowed, having the Board ask questions the  
22 way they do, I believe, enhances confidence in

1 the decision making process that what you do  
2 with the things you ask, the questions you  
3 seek answers for, can give confidence that  
4 those who are before you are actually being  
5 heard. That's particularly true for the  
6 protestants.

7 MEMBER ALBERTI: Yeah.

8 MR. WOODSON: So be - have a  
9 clock, but be willing to let it go.

10 (Simultaneously speaking)

11 MR. KLINE: Can I respond to that?

12 CHAIR MILLER: Okay.

13 MR. KLINE: I was somewhat the  
14 pioneer on notice of issues. When I first  
15 walked into this business and I walked into  
16 these rooms, I had no idea what the other side  
17 was going to throw at us so I screamed, we  
18 need notice of issues. It's due process. We  
19 need notice of issues - many years ago.

20 The result of that was a provision  
21 in the statute that says when you file a  
22 protest you have to state the grounds. So

1       what do we get? We get -

2                   CHAIR MILLER: Statutory

3                   MR. KLINE:    - a statutory  
4       recitation of peace, order and quiet. And so,  
5       you know, I didn't feel like I got very far.

6                   I think what the Board has done in  
7       terms of the PIFs and the other efforts that  
8       have been made with an investigative report in  
9       advance went much further than was the result  
10      of my screaming at the counsel and your  
11      predecessors that we need notices of issues.

12                  Because, I mean, the requiring  
13      parties, I mean, they're going to recite as  
14      little as they need to, particularly in the  
15      early stages, when they may not have  
16      formulated what their issues are.

17                  But I do think what you have done,  
18      as I said, getting the investigative reports  
19      before the hearing because you're right, and  
20      there was a time when we didn't see  
21      investigative reports. We'd walk in here and  
22      we had to prepare for everything because we

1 didn't know what was going to be in front of  
2 us.

3 MEMBER RODRIGUEZ: Yes, one of the  
4 concerns that I have is the number of  
5 witnesses that we have. At one hearing, and  
6 I moved to the Board, but I remember being  
7 here until one o'clock in the morning.

8 Now we heard every witness but  
9 there were an awful lot of witnesses and, you  
10 know, I'd like to see if you can provide some  
11 insight on this, some guidance on this because  
12 we want to hear everybody, but there are so  
13 many witnesses. And sometimes they say the  
14 same thing.

15 MR. WOODSON: Yes. I was here. I  
16 must say that when I had that, Chairman  
17 Miller's chair, I was very persnickety about  
18 that. And that's everyone has a different  
19 style of approach.

20  
21 But the rules of evidence are that  
22 you don't hear evidence that's irrelevant,



1 immaterial or unduly repetitious. And the  
2 unduly repetitious end of it tends to be where  
3 the problem is.

4 You can have ten witnesses to say  
5 basically the same thing that two can. So why  
6 hear ten? But, now having said that though,  
7 I think there's also this amorphous idea of  
8 fairness.

9 MEMBER RODRIGUEZ: Right.

10 MR. WOODSON: And that comes into  
11 play all of the time in these kind of  
12 proceedings. And so while you may improve  
13 your record, while you may narrow all of the  
14 time necessary, if the price to be paid, if  
15 the cost that's incurred is a lack of  
16 confidence in decision making and willingness  
17 to be fair, then it may be better to err on  
18 the side of more, more testimony.

19 But overall, it might be useful to  
20 have some ground rules around that to say,  
21 right in the front of the hearing if we have  
22 if you have ten witnesses with you to talk

1 about these issues then we don't want to hear  
2 the same thing from more than two. So choose  
3 the two you want to speak, have speak. That  
4 kind of thing may help.

5 But I do appreciate your point  
6 about repetitious testimony. It tends to  
7 reoccur all the time.

8 MEMBER SHORT: Excuse me.

9 CHAIR MILLER: Yes, Mr. Short.

10 MEMBER SHORT: Just to make a  
11 comment, I'd just like to throw up due  
12 process. You get citizens that come here  
13 who've been waiting for six or seven months to  
14 talk about issues that are affecting their  
15 quality of life.

16 And then they get here and then  
17 they are told, well, there's a time limit so  
18 you waited six months but you won't be able to  
19 testify tonight, although you have taken off  
20 from work or although you've done some things  
21 to alter your life style.

22 And hearing case after case, I

1 think the process that the citizens and also  
2 the businesses would like to have is just due  
3 process. So I think it'd be hard for a  
4 chairman to say I don't want to hear what you  
5 have to say after you sit here for five or six  
6 hours.

7 And so there's a thin line. Where  
8 do we draw the line with due process versus  
9 let's get the hearing over with faster?

10 MR. WOODSON: I appreciate that  
11 point, Mr. Short. That's why my remark was at  
12 the beginning of the proceeding be straight  
13 out about it. You will know who the witnesses  
14 are from the protest information sheet.

15 MEMBER SHORT: Okay.

16 MR. WOODSON: And you will know  
17 basically what they're supposed to say. So if  
18 there are ten people listed on the sheet to  
19 say the same thing then why not, at the  
20 beginning of the proceeding make that known so  
21 that they don't waste their time.

22 MEMBER SHORT: Okay, can I address

1 that?

2 MR. WOODSON: Sure, sir.

3 MEMBER SHORT: Let's say we have  
4 ten people that live on the same street at  
5 different addresses. Someone in Address 1  
6 might not hear the same thing as Address 3.  
7 Someone at Address 5 might not hear the same  
8 thing as but they have the same issue. So  
9 how do you know until they testimony, even  
10 after going through the PIF and all that  
11 information we have at hand?

12 And things might have changed  
13 between the time you had the PIF and you had  
14 the hearing. Let me say, in due process, is  
15 a person takes time off from their busy  
16 schedule, business person has to close the  
17 business down to be here, citizens have to  
18 take time off from work or have a babysitter  
19 for his children.

20 Where does that line that we draw  
21 do we simply say, this is it. Okay, we're  
22 going to hear this many people today and

1       that's it. We're going to     that's going to  
2       be the hearing.

3               The person then, as the citizen,  
4       says my government's not listening to me or  
5       the business person might say I didn't get a  
6       chance to really say everything I want to say.  
7       Due process says we hear everybody out. I  
8       think that's I understand is due process.

9               CHAIR MILLER: I think that there  
10      are different ways of approaching this. I  
11      mean, lately we've been approaching it or have  
12      been approaching it as letting people know  
13      they can adopt another person's testimony or  
14      say I agree basically with what they're saying  
15      except for this point, you know, to try to  
16      streamline it.

17              But I have one other question and  
18      we never have this dialogue. So while you're  
19      here, and then we'll hear from people on the  
20      other side with the protestants.

21              I'm just kind of also looking for  
22      tools, like, for instance, if the PIF has been

1 helpful would it be another step if -- and I  
2 think applicant could do this more than the  
3 protestants, but like a pre-hearing statement,  
4 this is what we're going to show and blah-  
5 blah-blah. It's like a little road map.

6 And then, you know, we have that  
7 focus and know what to expect. I think it's  
8 probably more balanced if both sides can do  
9 something. But I'm wary about putting too  
10 much burdens on the citizens. But I just  
11 wanted to throw what out as an idea.

12 I think it's to everybody's  
13 interest if the hearings don't go on for six  
14 hours. If they're really a little bit less  
15 and more focused, and primarily focused on the  
16 issues that matter to people that don't get  
17 lost in all the peripheral. So that's -- are  
18 there any other tools you think of or can  
19 address?

20 MR. PASCAL: I'm not here as often  
21 as certainly Mr. Kline and some of the others  
22 but in my early years of trial work, you know,

1 pre-hearing statements to try to define issues  
2 or pre -- were very helpful to really focus on  
3 the issue.

4 And that's why I brought the issue  
5 up because, again, many times the applicant of  
6 the licensee has to be prepared for everything  
7 that may come at them.

8 CHAIR MILLER: Right.

9 MR. PASCAL: Yet, after you hear  
10 the hearing it may only be a couple issues  
11 that were really the serious issues. So  
12 anything to define the issues, I think, would  
13 be great.

14 CHAIR MILLER: Okay, we'll get --

15 MR. WOODSON: If I could add a  
16 point to that, to look at the proceeding and  
17 adjudication, even though a law describes  
18 contested cases as trial type hearings, that  
19 really isn't the objective to have a trial in  
20 a judicial sense.

21 While I like the idea of the pre-  
22 hearing, pre-trial submission, as a lawyer, I

1       like that kind of stuff. It doesn't often sit  
2       well on the other side of the table.

3               CHAIR MILLER: Mm-hmm.

4               MR. WOODSON: Because, you know, we  
5       are practiced at the art of arguing on paper.

6               CHAIR MILLER: Right.

7               MR. WOODSON: Most of the citizenry  
8       is not. They are practiced at the art of  
9       talking to you about it. And that may be more  
10      valuable. Or maybe the value of that  
11      conversation could be diminished, if you will,  
12      with this pre-trial statement idea, although  
13      I like it, as a lawyer.

14              But I would say though that the  
15      mediation is something we haven't explored,  
16      maybe could be explored again. The mediator  
17      could have a role here to help. You know,  
18      classic mediation is you convene the parties,  
19      the parties talk and then the mediator helps  
20      the conversation.

21              I have found that the conversation  
22      in the mediation is often advanced when the



1 mediator can give some text, some contour,  
2 some color, to whether the issues that are  
3 being presented make sense. That's an  
4 informal kind of thing.

5 But perhaps some -- I think you all  
6 understand what I mean -- but something to  
7 help the Board see what these issues truly  
8 are.

9 MEMBER SILVERSTEIN: I think Mr.  
10 Jones has some --

11 CHAIR MILLER: Mr. Jones? Mr.  
12 Silverstein?

13 MEMBER SILVERSTEIN: I want to  
14 echo what Mr. Short said but go beyond that.  
15 People sometimes take off -- often take off  
16 from work, arrange their schedules, are here  
17 for a 4:30 hearing that doesn't begin until  
18 7:30 and doesn't end until 1:00 in the  
19 morning.

20 Or they take off to come to a  
21 hearing that ends up being canceled because  
22 the first hearing has gone so far that we

1 can't do the second, that our inability to get  
2 things done on a reasonable schedule to  
3 balance the need to hear evidence with the  
4 need to move things forward has been a problem  
5 that is one from which all of us suffer.

6 I would ask if you have any ideas  
7 on how we can, beyond -- and I think this was  
8 an excellent idea, that we should consider  
9 somehow limiting ourselves or at least trying  
10 to put a goal on that. I don't think that if  
11 something is important that we should stop  
12 ourselves from exploring it.

13 But would it be of any value to  
14 limit that 90 minutes to 60, to 75? Would  
15 that be a bad idea, necessarily on each side?

16 MR. KLINE: I'm going to address  
17 that. I think --

18 MEMBER SILVERSTEIN: How do we do  
19 two hearings a day without cheapening the  
20 process?

21 MR. KLINE: Right. I'd be  
22 concerned about going less than 90. And I

1 think in terms of hearing nine witnesses, if  
2 someone can put on nine witnesses in 90  
3 minutes and cross, God bless them. I mean, I  
4 wouldn't have thought of that.

5 And I'm sympathetic to the comments  
6 I've heard about, you know, people come down  
7 here and they want to be heard and they want  
8 their chance. I think the time limit is  
9 probably the fairest way to do it. It gives  
10 the quarter back on each side the ability to  
11 make a decision as to who they're going to put  
12 on.

13 And if people don't get on they can  
14 be mad at their quarter back instead of mad at  
15 you or mad at me because decisions have to be  
16 made about time. I mean, I come back to --  
17 and I agree with what Mr. Woodson says about  
18 the importance of the Board's questioning  
19 because I have found it extremely valuable in  
20 many cases that I've tried here.

21 But I will say that every other  
22 body, and their roles are as important as

1       yours, have some sort of time limit. And if  
2       the questions are important then it would seem  
3       that the board members could fit those within  
4       the time limit.

5               I don't see the process as broken  
6       as perhaps the record that I've heard this  
7       morning. I think things are working pretty  
8       well.

9               MEMBER SHORT: Amen.

10              MR. KLINE: Curious to hear from  
11       those that are here as protestants as to what  
12       they think. But, I mean, I think it's pretty  
13       good. I think it could be tighter in terms of  
14       time. I know all of you spend a tremendous  
15       amount of time down here, and I respect it.  
16       You pay attention. No one's sleeping on the  
17       desk. All of you are engaged. I know, from  
18       our side, we appreciate that.

19              I don't always agree with them but  
20       you make reasonable decisions. And I think  
21       that's all we can ask for.

22              MR. WOODSON: I would --

1 CHAIR MILLER: Yes.

2 MR. WOODSON: Let me join in that  
3 remark. The proceedings before the Board are  
4 really very good. And even in the time that  
5 I began engaging with all of this in the late  
6 90s, it has gone light years ahead.

7 So right now what you're trying to  
8 do is -- and what is being done here, is to  
9 refine the edges. But the core is good, but  
10 to refine the edges.

11 I would raise one other thing, that  
12 this issue has come and gone -- or not -- this  
13 solution has arisen, gone away, come back,  
14 gone away. And that is the size of the Board.

15 CHAIR MILLER: Right.

16 MR. WOODSON: There's a perennial  
17 problem with the workload that you all have to  
18 address. And the challenges that come, the  
19 parties participate through the parties and  
20 proceedings who have to deal with the Board  
21 and its work load.

22 So some years ago I was involved with a

1 discussion about enhancing the size of the  
2 Board to 11 and dividing the Board in half so  
3 that that the proceedings could all be handled  
4 in a more timely manner, that it would take  
5 less time to get to a protest.

6 It would take less time for the  
7 individual members of the body to have to  
8 spend with the work at hand. You know, there  
9 was a group of people who really liked that  
10 idea and there was another group that didn't  
11 like that idea, but all of which really were  
12 gathered around this notion of how do you  
13 allocate your time and how time is allocated  
14 to the work at hand.

15 I don't know if there's any --  
16 there is not perfect solution because if there  
17 was we'd have found it by now. So, I guess,  
18 what to I say? We're still a work in progress  
19 and we're trying to manage the irritation.

20 MR. PASCAL: I would certainly  
21 concur that I think the hearing before the  
22 Board today, for me as a practitioner, has

1       been a lot better than it was in the past.

2               Years ago I suffered through one  
3       case that took about four months because we'd  
4       put it on a couple hours, then we'd have to  
5       come back and it was just a nightmare. And my  
6       client was saying what's going on up in the  
7       District of Columbia?

8               So it's, clearly, much better now.  
9       I thought that there was a provision in the  
10      law that you could operate with panels and I'm  
11      not --

12              CHAIR MILLER: Operate with what?

13              MR. PASCAL: Panels.

14              CHAIR MILLER: Oh.

15              MR. PASCAL: I think there's a --  
16      as I understood it, in March the 7th was a  
17      provision a the law that you could operate in  
18      panels of three. And I've often wondered why  
19      that never was put into effect because that  
20      certainly would streamline things a lot.

21              MR. WOODSON: I would say, to join  
22      in that remark, that change came during my

1 tenure as chair. And the idea that panels of  
2 three are interesting, we found or I found  
3 that there were some internal challenges in  
4 dealing with that.

5 If you have a panel of three, then is  
6 that a final decision? And if it's not a  
7 final decision then how do you deal with that?  
8 That just adds another level of adjudication,  
9 if you will, to it. That was one.

10 And then the other is what panel is  
11 to hear what, when and to what extent does  
12 participation on a panel also obviate your  
13 need to appear together has a whole. So you  
14 could wind up having, instead of one day of  
15 hearings, you could have three or two per  
16 person.

17 MEMBER SHORT: To get the same  
18 information?

19 MR. WOODSON: Pardon?

20 MEMBER SHORT: To hear the same  
21 information?

22 MR. WOODSON: Yes, I think it's,



1 again, the same information or to get  
2 something else. But the point is you'd have  
3 to come down to a proceeding more than once a  
4 week. So --

5 MR. PASCAL: How about a second  
6 boardroom?

7 MR. WOODSON: Oh, I don't know.  
8 That would just get --

9 CHAIR MILLER: All right, I think  
10 we're getting off track. But thank you.  
11 Thank you very much.

12 MEMBER JONES: Madame Chair?

13 CHAIR MILLER: Mr. Jones?

14 MEMBER JONES: I just -- so I was  
15 very interested and I was kind of sitting  
16 back and listening to the dialogue. And we're  
17 talking about how we want to try and focus the  
18 nature of the hearings when we have protest  
19 hearings. So we try and get understanding of  
20 what the subject matter is and staying true to  
21 that subject matter.

22 But in our own dialogue and

1 discussion, based on what you originally  
2 presented, Mr. Woodson, and where we started  
3 which was a slight change in terms of the  
4 order of procedure, not even the burden of  
5 proof but really the order of procedure, we've  
6 gone to changing the size of the Board,  
7 creating different panels, just far afield of  
8 where we were.

9         So even in our best efforts in  
10 regulating ourselves in this process, we  
11 haven't been doing a good job of it in this  
12 process as we stand here today. So I'm going  
13 to help myself with this process and just and  
14 make sure I'm clearly understanding what you  
15 proposed originally.

16         In what you proposed, where is the  
17 time savings in the procedural elements forr  
18 what you proposed? And I'll say it, what I  
19 think it is and you tell me where I'm wrong.

20         The only time savings that I see is  
21 that you, if you're representing a licensee,  
22 you do not have to put on a case justifying

1       why you meet all of the points of every  
2       possible scenario that you could be challenged  
3       or your client could be challenged on.

4               You only have to present evidence  
5       to defend the voracity of your client's  
6       ability to meet the letters of the law or  
7       exceed them as per the specific items that are  
8       being raised as issues by the Protestant  
9       group. So, for example, if the protestant  
10      group says, I only have an issue with noise,  
11      then that's the only think that you have to  
12      present your case on.

13              So you could have witnesses that  
14      speak to trash, that speak to security, that  
15      speak to the safety, but you only have to put  
16      on your one witness about noise to defend your  
17      client's ability to be in compliance with  
18      being a good neighbor when it comes to noise  
19      emanating from his establishment. Is that  
20      what you sere saying originally in your  
21      proposal?

22              MR. WOODSON: Yes, and yes.

1 MEMBER JONES: Okay.

2 MR. WOODSON: If I might?

3 MEMBER JONES: Feel free.

4 MR. WOODSON: Yes to narrowing the  
5 number of issues that a licensee of licensee  
6 in renewal has to present.

7 But also yes that the issue beyond  
8 the issues in the protest become irrelevant as  
9 a matter of law because if the investigative  
10 report does not provide evidentiary foundation  
11 to call into question the operational  
12 characteristics beyond the protest issue, if  
13 it doesn't do then the only issue at hand in  
14 the proceeding is the trash, if you will.

15 And so a full-blown evidentiary  
16 presentation on everything else is irrelevant  
17 as a matter of law, not simply as a matter of  
18 fact or -- yes, not simply as a matter of  
19 fact.

20 So in effect, the answer is yes and  
21 yes.

22 MEMBER JONES: Got it. Thank you.

1                   CHAIR MILLER: Mr. Woodson, let me  
2 just follow up on that because this was an  
3 important point. I believe that your answer  
4 is yes to that because if there were other  
5 issues as to appropriateness the investigator  
6 would raise them.

7                   MR. WOODSON: That is one of the  
8 values that your investigative report has  
9 provided to all of us. But more importantly,  
10 it's provided it to you. It's helped us  
11 understand what is of concern with compliance  
12 but it is most important to the Board to give  
13 context and understanding of what really is  
14 before them.

15                  CHAIR MILLER: Mr. Alberti?

16                  MEMBER ALBERTI: Mr. Woodson, you  
17 said -- I'm sorry, but Mr. Woodson said  
18 earlier -- it struck me -- that you, as legal  
19 practitioners are skilled in making arguments,  
20 written arguments and that the protestants may  
21 not be. They probably, in most cases, are  
22 more skilled about, in talking about the

1 issues.

2           So when I look at one of the most  
3 important parts -- well, not -- one of the  
4 important parts of these protest information,  
5 the protest reports is the interviews with the  
6 protestants and with the applicant because  
7 you've got people talking and it reveals,  
8 really, what the issues are. I find them very  
9 helpful.

10           The rest of the report I find  
11 helpful but sometimes you have to read between  
12 the lines. Sometimes the investigator is  
13 missing things because they're just presenting  
14 facts, all right.

15           And you have to look at the big  
16 picture. You have to put all the facts  
17 together. So it is evidentiary evidence, all  
18 right. But it may not tell the whole story.  
19 And you as a representative of the applicant  
20 may interpret it.

21           So you've got to present evidence. I  
22 see the applicant having to present evidence

1 relative to what's in the report. So those  
2 are my comments, but what I would like to ask  
3 is how useful do you find the interviews that  
4 you see in these reports? Is that useful to  
5 you?

6 MR. WOODSON: It depends on the  
7 case, the type of procedure. Where the  
8 procedure's a protest they tend to be more  
9 interesting because you also have the  
10 opportunity for direct contact with the  
11 protestants.

12 And so that happens in formal  
13 discussions. It happens in mediation and so  
14 on. It's less so in show cause proceedings --

15 MEMBER ALBERTI: But we're talking  
16 about protests. We're talking --

17 MR. WOODSON: You asked me broadly.

18 MEMBER ALBERTI: Right, I realize  
19 -- I'm just focusing on the protest thing.  
20 That's what we're focusing here.

21 MR. WOODSON: I'm not sure how to  
22 -- I really am not sure how to respond to

1       that. I give great credence to the  
2       investigative report because facts really do  
3       matter. And that's what evidence it. It's a  
4       presentation of fact, not opinion.

5               And so, if an example, the argument  
6       in the protest is that there's too much noise  
7       but the facts reveal that there have been any  
8       number of noise analysis. There's been  
9       attention from the noise task force and the  
10      investigator finds that there's been  
11      compliance with the law, then what difference  
12      does it make what someone's opinion is about  
13      noise?

14             It's not what you think. It's what  
15      you prove. And in these kinds of proceeding  
16      the investigative report, I think, serves a  
17      great purpose for us in being able to narrow  
18      down what it is we're talking about. I hope  
19      that I've responded to that.

20             MEMBER ALBERTI: Yes, but, I mean,  
21      I guess my point was, you know, that the  
22      investigative report might -- the investigator



1 may go out and find a noise issue one night  
2 out of all the nights that are out there, all  
3 right.

4 Now that's a piece of evidence but  
5 you, as the applicant, I would assume would  
6 want to put that in context with evidence.

7 MR. WOODSON: Absolutely.

8 MEMBER ALBERTI: So my point is you  
9 keep implying that the report somehow stands  
10 alone as evidentiary piece of evidence. But  
11 it has to be flushed out by the applicant.

12 MR. WOODSON: Well my only  
13 rejoinder to that, Mr. Alberti, is if the  
14 investigative report's conclusion is there's  
15 regulatory compliance what else is there to  
16 flush out?

17 Because the factual argument from  
18 the applicant would be we're in regulatory  
19 compliance. So is it necessary to do that?  
20 On the other hand, if the investigative report  
21 says there is non-compliance and it's a non-  
22 compliance for this and non-compliance for

1       that, then of course the applicant must come  
2       forward and either rebut that or provide some  
3       other contextual perspective on that.

4               MEMBER ALBERTI:  Thanks.

5               MR. WOODSON:  On those issues, if  
6       you will.

7               MEMBER ALBERTI:  Okay.

8               CHAIR MILLER:  Mr. Jones?  Okay,  
9       are we wrapping this up, Mr. Jones, so we can  
10      --

11              MEMBER JONES:  No.

12              CHAIR MILLER:  No?

13              MEMBER JONES:  I have a question.

14              CHAIR MILLER:  No, okay.  I know  
15      you have a question.  Go ahead.

16              MEMBER JONES:  When you speak of  
17      compliance is this compliance in the form of  
18      a compliance with the regulations, i.e., if  
19      you're not in compliance you receive a  
20      violation of some sort?

21                      Or were you speaking of compliance  
22      in some other meaning of the word?

1 MR. WOODSON: Please say that again  
2 to me, Mr. Jones.

3 MEMBER JONES: In your response to  
4 Member Alberti you used the words compliance  
5 when referring to the investigator and his  
6 putting together an investigative report  
7 related to a protest hearing.

8 MR. WOODSON: Yes.

9 MEMBER JONES: You mentioned  
10 compliance.

11 MR. WOODSON: Yes.

12 MEMBER JONES: And you said if the  
13 investigator doesn't find that there are any  
14 compliance issues then what is there to talk  
15 about. But if he does or she does find a  
16 compliance issue then there is something to  
17 talk about, and that's what we'll focus on.

18 Did I misunderstand your response  
19 to board member Alberti?

20 MR. WOODSON: No, you did. You  
21 understood that.

22 MEMBER JONES: Okay, so when you

1 said compliance in that sense what meaning of  
2 the word were you using? Were you saying it  
3 in the sense of compliance/non-compliance?  
4 Fine/no fine or violation/no violation sense  
5 of the word?

6 MR. WOODSON: Well the  
7 investigative report, if it concludes there is  
8 regulatory compliance that is affirmatively  
9 stated in the report.

10 MEMBER JONES: Correct.

11 MR. WOODSON: Then what is the  
12 value in enhancing the record to prove  
13 compliance again?

14 MEMBER JONES: So in terms of a  
15 protest hearing are there issues that are  
16 relative to a protest hearing that wouldn't  
17 result in a non-compliance violation?

18 MR. WOODSON: Well, that's the  
19 allegation that you get from protestants. In  
20 the, for purposes of the investigative report  
21 and its -- and it is evidence. The  
22 investigative report says one thing. If the

1 protestants say something else to that then  
2 let's talk about that.

3 But it becomes a question of what  
4 the protestants put forward about non-  
5 compliance that becomes the subject of  
6 discussion or the issue in the proceeding  
7 because the investigative report stands as an  
8 independent piece evidence that there is  
9 compliance on that issue.

10 So what does the protestant have to  
11 say to rebut that? By contrast or the flip  
12 side of that is if the investigative report  
13 says there is non-compliance and the  
14 applicant's evidentiary submission does not  
15 address that the same infirmity applies, the  
16 same problem portends because you have not  
17 provided an evidentiary submission to rebut  
18 the claim of non-compliance by the  
19 investigator on the other side of the coin.  
20 So it works on both ends.

21 MR. KLINE: Perhaps I'm seated at  
22 the wrong table for this one, but I think the

1       investigative report goes to appropriateness,  
2       which goes beyond issues of compliance.

3               I mean, compliance is your  
4       enforcement, regulatory matter. And I'll be  
5       the first one to concede that your decision in  
6       the appropriateness context would be complete  
7       compliance but there's still possibility of a  
8       finding of appropriateness.

9               So I'm not sure I completely agree.  
10       I mean, I think the investigator could raise  
11       other issues with respect to its  
12       appropriateness. So, yes, they're compliant  
13       with regulations but there's a noise  
14       disturbance, you know, there are the issues  
15       that fall under the appropriate .

16              MEMBER JONES: Okay. So thank you,  
17       so to both of your points. My struggle was  
18       trying to understand and -- because that's --  
19       I'm more in line with what Mr. Kline, in terms  
20       of I, as an individual board member, view a  
21       protest hearing versus a regulatory type of  
22       hearing for a violation of some sort.

1                   So when you used the word  
2                   compliance it struck a chord with me from that  
3                   standpoint. But that being said, I understand  
4                   where both of you are coming from and I'll  
5                   leave it at that. Thank you.

6                   CHAIR MILLER: Good, okay.

7                   MEMBER SHORT: Okay.

8                   CHAIR MILLER: All right.

9                   MEMBER SHORT: Madame Chair?

10                  CHAIR MILLER: Oh, Mr. Short. I'm  
11                  sorry, go ahead.

12                  MEMBER SHORT: Just my thought on  
13                  this. The investigative report says the  
14                  investigator went out three nights out of two  
15                  months -- one o'clock, 12 o'clock, maybe 10  
16                  o'clock. But the protestants are saying it's  
17                  3 o'clock in the morning every day that they  
18                  hear this, every Friday and Saturday night.

19                  So now you have a report that says  
20                  I didn't find any problem. And now if you  
21                  tell the protestants they can't testify to  
22                  what they've heard at 3 o'clock in the morning

1 when the investigator wasn't there, then  
2 that's not due process. That's the only point  
3 I'm trying to make.

4 MR. WOODSON: Yes, to that, Mr.  
5 Short, I would say then the record needs to  
6 expound on that because if the investigative  
7 report has that scenario but the protestants  
8 talk about something that happened outside of  
9 that scenario then we need to hear about that.  
10 That's -- that becomes the subject of the  
11 discussion.

12 CHAIR MILLER: Okay?

13 MEMBER SHORT: Thank you very much.

14 MR. KLINE: Thank you.

15 CHAIR MILLER: Thank you. This has  
16 been a good dialogue.

17 MR. WOODSON: Thank you for the  
18 time.

19 MR. KLINE: Thank you very much.  
20 Very informative.

21 MEMBER SILVERSTEIN: Thank you so  
22 much.



1 CHAIR MILLER: Okay, I'm going to  
2 call the next panel. Abigail Nichols, D.C.  
3 Night Life Noise Coalition, Milton Grossman,  
4 Denis James, Kalorama Citizens Association.

5 (Off microphone discussion)

6 MS. NICHOLS: I have written  
7 testimony but it's not for any --

8 CHAIR MILLER: I see that. I guess  
9 I could just start with you.

10 (Off microphone discussion)

11 MEMBER ALBERTI: Did you call  
12 Milton Grossman or --

13 CHAIR MILLER: Yes. I did. Yes, I  
14 did.

15 (Off microphone comments)

16 CHAIR MILLER: Ms. Nichols? Ms.  
17 Nichols, did you have copies for the Board?

18 MS. NICHOLS: Yes.

19 MEMBER ALBERTI: I think she's given  
20 them to Martha already.

21 CHAIR MILLER: Oh, okay. Thank  
22 you.

1 MS. NICHOLS: But I'm going to can  
2 that in what I say.

3 CHAIR MILLER: Okay.

4 MEMBER SILVERSTEIN: That'll be  
5 much appreciated.

6 MR. KLINE: She's going to what?

7 MEMBER SILVERSTEIN: Can it. I  
8 think she's going to condense it.

9 MEMBER ALBERTI: Condense it? Oh,  
10 after this discussion.

11 (Off microphone conversations)

12 CHAIR MILLER: Okay, I'm going to  
13 mix up the order here a little bit if you  
14 don't mind -- and don't ask me why.

15 But okay, I would like it if MR.  
16 James could go first and then Ms. Nichols and  
17 then Mr. Grossman. So you have to pay  
18 attention, yes. Okay.

19 MR. JAMES: Thank you for that.

20 CHAIR MILLER: Okay.

21 MR. JAMES: Ms. Jenkins has my  
22 written testimony and it does not include the

1 remarks that I wish to make about what I just  
2 listened to.

3 CHAIR MILLER: Yes, sure. We're  
4 very interested in that.

5 MR. JAMES: So I think I will write  
6 some additional comments and get them in by  
7 the end of the day.

8 CHAIR MILLER: Okay.

9 MR. JAMES: From one who sat here  
10 through some very long hearings, not some of  
11 you longest I think but some pretty good ones.  
12 I do appreciate the desire to streamline the  
13 process, make it better, cover all the ground  
14 that's necessary.

15 But one thing I do know, I can  
16 understand why the Board likes the  
17 investigative reports that it gets and I do  
18 agree with it. They're much better than in  
19 past years. The raw information is certainly  
20 helpful. It helps you locate the establishment  
21 in the neighborhood, photographs, the maps  
22 that show all the other establishments, the

1 listing of the establishments.

2 But then when you get down to the  
3 number of visits and no problem found for  
4 establishments that, every time I walk by them  
5 I'm seeing a problem. Maybe it's late at  
6 night. Maybe the investigator's not there  
7 that particular time.

8 It feels like prejudicing a jury  
9 against the case that we're trying to put  
10 forth. I'm not damning the whole  
11 investigative report. I'm trying to be fair  
12 to what I heard. And there's useful  
13 information for us in there as well.

14 And we can cite, obviously, during  
15 the hearing see, oh, well there's the  
16 investigative history and that includes  
17 certain reports and those have record of  
18 different violations that have been assessed,  
19 and that's something the Board should take  
20 into consideration.

21 But for the investigator to truly  
22 know if there's a noise problem, the fact that

1 the Board -- and let's just say for an  
2 establishment, for any given establishment  
3 there's no noise problem noticed by the  
4 investigator.

5 Well, the investigator is quite  
6 honestly not competent to judge some of those  
7 violations because the ABC code does allow the  
8 D.C. Noise Control Act with decibel meters to  
9 be used. And your investigators are not  
10 competent in the use of those. So, you know,  
11 that's just one little --

12 MEMBER SILVERSTEIN: Say that  
13 again, sir? I didn't hear that.

14 MR. JAMES: Sorry, your  
15 investigators are not competent in the use of  
16 decibel meters. I mean, they can become  
17 competent. They're not trained in it, to my  
18 understanding. So, but just, like it's a  
19 prejudice against the case that the community  
20 is trying to make sometimes.

21 I'm not saying, I'm not trying to  
22 paint with a hugely broad brush, just an

1 observation that I'd like to make based on  
2 that long discussion.

3 So to get to my written testimony,  
4 the pub crawl section, I think it's a good  
5 idea to have a license created. But I don't  
6 think you go far enough. If you're going to  
7 call it a license, well, should it be  
8 protestable?

9 It seems that would be fair because  
10 I know that in other communities there's a lot  
11 of pub crawls. And if that were going on in  
12 my community I would want the ability to  
13 effect it. As you know from many of our  
14 settlement agreements, in Adams Morgan we have  
15 provisions that say no pub crawls? It's not  
16 universal but it's very close to that.

17 And it has protected us against  
18 some really bad behavior that -- that's what  
19 we used to have there. So it wasn't based on  
20 just like, oh, we don't want those, that  
21 sounds nasty. We did experience them.

22 So -- and I understand that it's,

1 the idea is to be able to better control them  
2 because the Board doesn't see that it has  
3 authority. So, but if you're going to have  
4 authority then you need some penalties to  
5 assess, and I don't think there are any  
6 penalties to assess. Maybe there are general  
7 ones.

8 But it seems like there are some  
9 that could be gleaned from the regulations on  
10 pub crawls that are in existence that you  
11 could put into the civil penalty section.

12 And then the timing problem. The  
13 old 712.1 says that the organizer must file an  
14 application six weeks prior to the event. Bu  
15 the new 712.1 foresees the ability to get a  
16 potential pub crawl licensee license and still  
17 be able to submit an application for Board  
18 approval for the licensee's first event just  
19 30 days in advance.

20 That doesn't seem like enough time  
21 and particularly if the Board should agree  
22 with this idea that it become a protestable

1 license. Also I think taking this step is  
2 probably going to sort of give sanction to a  
3 little mini-industry that kind of already does  
4 exist. But it'll become something more like,  
5 oh, that's something you can do. I think I'll  
6 create a business that's just about that and  
7 nothing but that.

8           So then there becomes an entity  
9 that could have great affect on different  
10 communities. I know that downtown parts of  
11 Dupont Circle have many pub crawls because  
12 whenever there is one listed I tend to inquire  
13 if I can't tell where they're listed, just to  
14 make sure that Adams Morgan establishments,  
15 though they said they won't, are not  
16 participating.

17           So that's my thoughts on the pub  
18 crawl. There's references in 1602.5 and  
19 1612.2 to protest petitions. And I'm pretty  
20 sure that this refers to the old protest  
21 process by which the objectors could go around  
22 and essentially get a vote of the neighbors,



1 within the prescribed distance, 600 feet,  
2 1,200 feet and present that to the Board as  
3 sort of like a vote against an establishment  
4 or a request.

5 And I just think that that protest  
6 petitions is antique language that didn't get  
7 repealed when that Section of 25601 was  
8 repealed earlier. And those were Sections --  
9 I'm not sure which ones, but 25603 through  
10 25608 have been repealed. I'm pretty sure  
11 that that's what that is in relation to.

12 CHAIR MILLER: Okay.

13 MR. JAMES: There might be other  
14 reasons to get to petitions, but I don't think  
15 they're protest petitions. Because if the  
16 point is to have people qualify for protests,  
17 in the language of 1602.5, in addition to or  
18 instead of filing a protest, it seems like  
19 it's all about becoming a protestant.

20 And that was one way this petition  
21 was in a certain area. There were very  
22 divisive things, you know, neighbor against

1 neighbor. They were generally considered very  
2 unpleasant types of protests that everyone  
3 agreed would be for it to be a good idea for  
4 it to go away at the time.

5 So then the 1612.2, no, I'm sorry.  
6 That's the same, same item. Moving to the  
7 1605, Party standing of a group of five or  
8 more residents or property owners.

9 I think the Board's suggestion for  
10 what that should contain is too limiting. And  
11 I suggest changes which I show underneath the  
12 Board's initial paragraph at the top of Page  
13 2. There are parts of the code which give  
14 further explanation. And I think regulations  
15 are meant to flush out the code.

16 So I think that would be reasonable  
17 to include the information that a moratorium  
18 zone only requires three persons with like  
19 grounds for their protest in that part. And  
20 I'd rather use the word shall be granted  
21 standing instead of will. And state the  
22 requisite number which would either be five or

1 three or more.

2 So that would be my suggestion  
3 there in that section. And it's to, just to  
4 make it clear and more straightforward that  
5 there are two standards for how many people  
6 take to make up a group.

7 Then the part that I -- the  
8 proposed reg that it gives me the most  
9 heartburn is that 1605.3, a group of five or  
10 more individuals will be defined by the  
11 members -- Pardon?

12 CHAIR MILLER: I said that's the  
13 five minutes. Do you want to wrap up?

14 MR. JAMES: Gosh.

15 CHAIR MILLER: So I know we spent a  
16 lot of time with the other witnesses, but we  
17 were --

18 MR. JAMES: Sure. Yeah, well, this  
19 is just my last point and it's --

20 CHAIR MILLER: Okay, that's fine.  
21 You can wrap it up.

22 MR. JAMES: And I will be wrapping up.

1 CHAIR MILLER: That's fine.

2 MR. JAMES: Absolutely. So the  
3 group of five or more individuals will be  
4 defined by the members set forth in the  
5 protest petition. In other words, it's a  
6 closed group in the Board's eyes. And it's  
7 closed upon sending in the protest letter.

8 And it just doesn't seem the  
9 reality of life. There's a 45-day protest  
10 period. What if somebody returns from an out  
11 of town trip, a business trip and they come  
12 home on the last day of the protest period and  
13 they file off a good letter.

14 And there's nothing the matter with  
15 it any other way. It's timely. But they  
16 can't join that party, that group of five that  
17 was created or group of seven or whatever  
18 number it happens to be.

19 People should be able to come here  
20 to the roll call. And it's fine to have pre-  
21 formed groups but if there's one or two or  
22 three stragglers they just don't -- people

1 don't know everybody. It's a dense, urban  
2 environment in Adams Morgan and there's many,  
3 there's hundreds of people within large  
4 apartment buildings around establishments.

5 So I just think that that's too  
6 exclusive and takes, I'm not sure if -- due  
7 process -- away from those individuals. I  
8 don't think the Board should be taking that  
9 sort of action. You should not take actions  
10 that suppress participation.

11 CHAIR MILLER: Okay, so it you wrap  
12 it up --

13 MR. JAMES: That's it.

14 CHAIR MILLER: I think I'd like to  
15 get a look at that. I think I'd certainly  
16 want to get back to that point when we do the  
17 questioning.

18 MR. JAMES: Thank you.

19 CHAIR MILLER: And I want to say,  
20 Mr. Rodriguez had to go testimony at a counsel  
21 hearing and he'll be back if he can. I know  
22 he wanted to hear you all and we ended up

1 spending a lot of time on that first panel.  
2 So I know he'll certainly read the transcript  
3 if he doesn't get back for the rest of the  
4 hearing. Okay, Ms. Naples.

5 MS. NAPLES: Chairman Miller,  
6 members of the Board, I'm very glad to be here  
7 to testify. I'm also very glad to be hear to  
8 listen because this is the first time I've  
9 ever participated in a regulatory proceeding  
10 of any kind. I mean, you've seen me a lot on  
11 protests.

12 And so I came with not  
13 understanding how structured this could be or  
14 unstructured because one of the things as I  
15 read the regulations, I was very concerned  
16 about what isn't there. But if I'm correct,  
17 was Mr. Woodson talking to issues that are not  
18 in the proposed regulations? I'm talking  
19 about suggestions for changing the hearing  
20 process.

21 For me that issue was noise  
22 regulation. We've been working for a year

1 with the Agency on noise problems and feel  
2 that there's so much that could be done in  
3 regulations and we don't see anything there.  
4 And we'll be submitting something separately  
5 about that.

6 Another one of my ideas was, oh, I  
7 wish this were a forum so I could better  
8 understand why you were proposing what you  
9 were proposing or that there had been an  
10 upfront statement of where the various changes  
11 came from, a side by side -- you know, what's  
12 cleaning it up, where the laws changed, where  
13 we've noticed these problems and then -- but  
14 a forum would then allow that back and forth.

15 And it did appear you were having  
16 a very good back and forth with Mr. Woodson on  
17 his ideas about hearings. And, you may  
18 recall, I was at that hearing and I have a lot  
19 of ideas about it too. And I was very  
20 interested in what he said and think that  
21 there's something there.

22 Because, to respond to Mr. Short's

1 comment, the residents didn't get to speak at  
2 that hearing because of various procedural  
3 matters. In part, they ran out of time. I  
4 never got to talk. I sat through the whole  
5 thing.

6 I talked like rush.

7 One resident had to leave because  
8 she had set aside so much time, but she had an  
9 elderly person to go do some important  
10 birthday with. And, maybe putting the  
11 resident's case up front would allow for that.

12 In terms of repetitive testimony,  
13 residents often feel their concerns minimized.  
14 Oh, that's a crank. And so I try to bring --  
15 I got 105 signatures on my first petition to  
16 try to overcome that feeling on our part.

17 Okay, so when, based on what's  
18 going on so far, I would suggest a hearing on  
19 the subject of hearings conducted as a forum.  
20 Perhaps a separate hearing on noise  
21 regulation. Something, a statement from you  
22 all, more about why you're doing.



1           Mr. James picked up on pub crawls.  
2       I started picking up on things and then I  
3       thought, I'm going to submit that separately.  
4       There's not going to be time in five minutes.  
5       And I just also wanted to say that as I looked  
6       at the timeframe from resident point of view,  
7       three weeks today from the publication of the  
8       notice, for residents to even notice there's  
9       a reg out there, to study it and do some kind  
10      of an analysis.

11           And the last thing is to show if  
12      there are any support for the comments. I'm  
13      just talking for myself. I haven't had a  
14      chance, barely, to show my comments to my  
15      partner in D.C. Night Life. So with that, I  
16      really support the Shaw Dupont Citizens  
17      Association who I think has submitted written  
18      testimony but aren't here today because of how  
19      much they manage to do in three weeks.

20           So and the last thing would be  
21      don't rush to final rules because, as a newbie  
22      to the regulatory process, your statement that

1       you plan to publish final rules in not less  
2       than 30 days, I thought, well what's the point  
3       of a hearing? They can't do anything with a  
4       hearing and publish rules. But maybe that's  
5       not -- Mr. Woodson was explaining that maybe  
6       isn't what that means in that phrase.

7               And I won't say anymore. Oh,  
8       except to say I'm willing to help with  
9       regulatory improvement. I mean, that's it.  
10       I'm seven years into this now as a resident.  
11       And I just characterize myself as stubborn and  
12       put an awful lot of time into this, and I'd  
13       sure like it to be less.

14               CHAIR MILLER: Well, we really  
15       appreciate you coming down and having this  
16       dialogue with us. We'll get back to you. All  
17       right, Mr. Grossman.

18               MR. GROSSMAN: Members of the  
19       Board, my name is Milton Grossman. I'm a  
20       longtime member of the District of Columbia  
21       Bar and a longtime resident of the Glover  
22       Parks Community.

1 Over the past couple of decades I  
2 have represented the RANC, our citizen's  
3 association, and many individual residents and  
4 businesses as protestants in these ABC Board  
5 proceedings. But this morning I am here  
6 solely speaking for myself.

7 It is obvious that the Board has  
8 given a lot of consideration to the changes  
9 which are needed in the procedural rules based  
10 on the recent changes in the statute and its  
11 accumulated experience in dealing with  
12 proceedings before the Board.

13 So it was extremely disappointing  
14 to me to find that the Board totally failed to  
15 deal with a provision of the existing  
16 procedural rules which is markedly at variance  
17 with the underlying statute and which indeed  
18 severely undercuts participant rights  
19 guaranteed by that statute.

20 And I'm referring to the provision  
21 of Code Section 1605.2 which states all  
22 protests shall be in writing and shall be

1 received by the Board by the end of the  
2 protest period and shall state as grounds for  
3 the protest why the matter being objected to  
4 is inappropriate under one or more of the  
5 appropriateness standards, et cetera.

6 In other words, the Board and staff  
7 now takes the position that if a protest fails  
8 to state one of the appropriateness grounds as  
9 a basis for the protest it is out of here. It  
10 will not be recognized as a protest that meets  
11 the requirements of the statute.

12 This position cannot be sustained  
13 by any reading of the underlying statute.  
14 Section 25.601 sets forth the standards to  
15 file a protest against a license.

16 CHAIR MILLER: I'm sorry --

17 MR. GROSSMAN: Nothing in that  
18 section in any way indicates that it is  
19 necessary to make an appropriateness objection  
20 in order to have a valid ground for protest.

21 I invite the Board to look at  
22 Section 25.301, the general qualifications for

1 all applicants. And I think it is not without  
2 significance that the very first requirements  
3 stated as a general requirement for all  
4 applicants is that the applicant be of good  
5 character and generally fit for the  
6 responsibilities of lessons of licensure.

7 Yet if a protestant were to file a  
8 protest based solely upon a concern that the  
9 applicant is not generally fit to meet the  
10 requirements of licensure it would be thrown  
11 out on one's ears. Not a protest that meets  
12 the requirement of Section 16.105.2.

13 This is a problem that needs to be  
14 addressed by the Board. Nothing in the  
15 statute, nothing in any of the decisions of  
16 the D.C. Court of Appeals lends the slightest  
17 support for the notion that the only basis for  
18 an objection to a license is an  
19 appropriateness objection.

20 Now in the Glover Park Community we  
21 have been particularly concerned about the  
22 fitness of our, one of our nude dancing

1 establishments to meet the requirements of  
2 licensure. And yet we were not allowed to  
3 present those objections to the Board. And  
4 indeed an application for reconsideration  
5 without rejection is still pending before the  
6 Board after many months.

7 And I think it is notable that  
8 while this proceeding is still pending before  
9 the Board we learned not too long ago that the  
10 person that put up all the money for the  
11 acquisition of this license has plead guilty  
12 in the District Court of Maryland to drug  
13 trafficking charges and that the U.S. Attorney  
14 is now seeking the forfeiture of that license  
15 as a product of the drug trafficking.

16 And this is something that an  
17 exploration of in an ABC Board proceeding  
18 would have been very enlightening. So I'm  
19 urging the Board to get rid of the language in  
20 Section 1605 that limits protests to  
21 appropriateness grounds.

22 Now I might add that this makes

1 good sense as a matter of Board housekeeping.  
2 It is very, very easy to throw out the catch  
3 words noise, parking, defacto peace, order and  
4 quiet and be in the proceeding.

5 And indeed there's some indication  
6 that if you do that you can slide under the  
7 door a concern about fitness. This makes no  
8 sense whatever. There's no reason to force a  
9 protestant to raise a concern that was not at  
10 the heart of this real problem in order to  
11 raise the concern that really is. So I urge  
12 the Board to make those changes.

13 CHAIR MILLER: Thank you. Okay,  
14 questions for -- we're going to start with Mr.  
15 James since he was first? Anybody have any  
16 questions for Mr. James?

17 MEMBER SHORT: Yes, I have.

18 CHAIR MILLER: Yes, Mr. Short.

19 MEMBER SHORT: Mr. James, thank you  
20 for coming out this morning. You made a  
21 statement about the readiness of the  
22 investigators to coming out about the

1 registered noise.

2 Are you familiar with the new Noise Task  
3 Force? MR. JAMES: Yes.

4 MEMBER SHORT: Now can tell me what  
5 you know about the new task force?

6 MR. JAMES: I read about it. I  
7 understand that it's made up of different  
8 agencies and DRCA's included, and they do have  
9 decibel meters at their disposal.

10 MEMBER SHORT: That doesn't meet  
11 your qualifications of being well trained and  
12 -- you said due diligence when it comes to  
13 noise inspections?

14 MR. JAMES: Well, I don't believe  
15 that the task force is involved in the routine  
16 creation of the investigative reports for  
17 protest hearings for one thing. It seems to  
18 me that's one ABRA investigator is assigned to  
19 that. And the many visits that are listed --

20 MEMBER SHORT: We -- sorry, okay,  
21 go ahead.

22 MR. JAMES: So I've seen maybe a



1 dozen to 20 or 30 visits listed of  
2 establishments at various times. And it's  
3 usually the investigator, him or herself,  
4 saying I went there at these times, on the  
5 stand, sworn.

6 And to my knowledge the task force  
7 is not involved in that. That might be a good  
8 move to sometimes include them.

9 MEMBER SHORT: Would you like to --  
10 so duly noted. Thank you, Madame Chair for  
11 that. Thank you, sir.

12 CHAIR MILLER: Mr. Alberti.

13 MEMBER ALBERTI: Mr. James, thank  
14 you for coming. I just, real quickly, I want  
15 to thank you for paying such close attention  
16 to these regulations. And especially noting,  
17 I think, our proficiency in 1605.2. We  
18 certainly need to address the groups of three  
19 there. And I missed that and I thank you for  
20 pointing that out. Thank you.

21 MR. JAMES: Glad to hear that.

22 Thank you.

1 CHAIR MILLER: Mr. Jones.

2 MEMBER JONES: I just want to thank  
3 you for that. I missed that as well, so I  
4 apologize.

5 MR. JAMES: Okay, great.

6 CHAIR MILLER: Okay. I know I  
7 wanted to get back to you on the deadline for  
8 protestants to join a party of five. And what  
9 do you -- do you have a proposal? There needs  
10 to be some deadline. Would you agree there  
11 needs to be some finality, some deadline as to  
12 whether --

13 MR. JAMES: It's already in the  
14 law. It's 45 days for a protest period. And  
15 because I don't happen to know those three or  
16 five people across the way and that they filed  
17 a protest --

18 CHAIR MILLER: So are you saying  
19 that it's in the statute that it's 45 days and  
20 that this regulation shortens that period?

21 MR. JAMES: I don't think it does  
22 do that. But, I mean, one could imply that it

1 does do that in a way, based on my example. I  
2 mean, my example was exaggerated, say, the  
3 last day. But it's a day that you can file a  
4 protest.

5 CHAIR MILLER: So you're saying if  
6 you have 45 days to file a protest -- just so  
7 I make sure I understand you correctly. I'm  
8 not looking at the regulations right this  
9 second.

10 Say you had a party of five made up  
11 of 15 people right now and you filed it within  
12 30 days. And then 10 days later somebody else  
13 wants to join it, these regulations disallow  
14 that?

15 MR. JAMES: Yes, I believe they do.

16 CHAIR MILLER: And that's your  
17 concern, that they should allow it until the  
18 45th day?

19 MR. JAMES: Correct.

20 CHAIR MILLER: Okay.

21 MR. JAMES: Well, but actually  
22 until you get through roll call what you will

1 now call roll call but what is called the  
2 administrative review, in a change in these  
3 regs, you don't know until you get there. I  
4 mean, how do you know? Did you go and knock  
5 on 100 doors around your neighbor to find out  
6 if someone else has protested, and is there a  
7 group that I could join?

8 I mean, it does say group in the  
9 code. It says a Group of Five. But it  
10 doesn't say pre-formed group of five.

11 CHAIR MILLER: Okay, so what you're  
12 saying is parties ought to be able to form a  
13 group at the roll call because that's where  
14 they meet other people that might have similar  
15 interests. That's what you're proposing?

16 MR. JAMES: Yes, and that has been  
17 the practice. You know, I sometimes argued to  
18 the Board's agent in these cases. But if  
19 there's somebody who just showed up we have no  
20 objection to them joining this pre-formed  
21 group, you know, that organized themselves at  
22 some point.

1                   So I think that's definitely, it's  
2 not relayed out in the code, but it's not  
3 prohibited in the code. And the code -- I  
4 think, again, the word pre-formed.

5                   CHAIR MILLER: So, right, this is  
6 your proposal?

7                   MR. JAMES: I think the Board's  
8 proposal would prevent it. So I would say  
9 don't be --

10                  CHAIR MILLER: Do you think its  
11 allowed right now based on the statute? Is  
12 that what you're saying?

13                  MR. JAMES: Yes, I definitely think  
14 it's allowed. And it's happened many times in  
15 cases that I've been involved with for a long  
16 time.

17                  I mean, that used to be where you  
18 met your fellow protestants. This part I'm  
19 hazy on but the group of five, I think that  
20 came into being in the year 2004, that  
21 language in 25.601.

22                  Before that it was different

1 language but it was, I think it was more  
2 loose. And this was a bit of a restriction --

3 CHAIR MILLER: Okay.

4 MR. JAMES: -- to tighten it. But  
5 --

6 CHAIR MILLER: So is your view the  
7 mediator should be able to make the decision  
8 about joining groups and putting people into  
9 groups? Is that your position?

10 MR. JAMES: You can't change it.

11 Yes. CHAIR MILLER: Because?

12 MR. JAMES: It's not the mediator.  
13 I understand that the person that does that  
14 role now is the Board's mediator.

15 CHAIR MILLER: That's what I mean,  
16 that person, at roll call.

17 MR. JAMES: So I think it would be  
18 better to spell it out than to have it be  
19 gray. I'd be glad to put, to write a  
20 suggestion. I just was objecting to what the  
21 Board's proposal is that seems to say that a  
22 group of five or more individuals will be

1 defined by the members set forth in the  
2 protest, that seems to change. It's a closed  
3 circle. That's who we are.

4 And I just don't understand why  
5 that would -- I mean, these are the kind of  
6 things that happen is that you might lose a  
7 protestant. Somebody might move between the  
8 filing of the protest and the actual protest  
9 hearing.

10 And the other side can say, oh,  
11 they're not a group of five anymore. So let's  
12 have those who are affected is my only point.  
13 I'm not saying fake it so there's a whole  
14 bunch more. I'm saying just let those who  
15 have come forward with a protest letter filed  
16 timely, with the proper grounds cited, that's  
17 common to the others be invited to join that  
18 group.

19 I'd be very surprised if people  
20 rejected their neighbors who were concerned  
21 about an establishment. Say, oh, no, we don't  
22 want that person to join.

1 CHAIR MILLER: Okay. All right.

2 MR. JAMES: And I don't see how it  
3 would really hurt the Board. Let's just say  
4 it's a group of five and one more person is  
5 added. I don't see how that negatively  
6 affects the Board's activities.

7 CHAIR MILLER: Thank you. Okay.  
8 All right, I was wondering if you just have an  
9 idea about protestants going ahead of the  
10 applicant in the protest hearing.

11 MR. JAMES: I think the code  
12 clearly states that the burden of proof is on  
13 the applicant to show that they are  
14 appropriate. I think that would be a  
15 departure from the code. The Board can write  
16 regs but not the code so I think that's a  
17 subject that would deserve much more attention  
18 in a Council hearing perhaps.

19 But it's like given the associated  
20 changes to the PIF and the exhibits there's an  
21 awful lot of information being exchanged  
22 between the parties, so they do know what each



1 other are going to be presenting.

2 CHAIR MILLER: Right.

3 MR. JAMES: And if you've got good  
4 evidence then we hope -- let's say, at the  
5 protestants' side which is the side that I'm  
6 on occasionally, had good evidence. One, you  
7 hope that it would be heard and accepted. And  
8 the other side would have to essentially rebut  
9 it. But I don't see any particular savings in  
10 changing the order.

11 CHAIR MILLER: Okay, and yes,  
12 actually I thought that you had some concerns  
13 about exhibit forms and stuff, but are you  
14 getting, exhibit forms, you're pretty much  
15 onboard with them?

16 MR. JAMES: Well, I ran out of  
17 time. I would have probably written something  
18 about that. I will still do that, but --

19 CHAIR MILLER: Okay.

20 MR. JAMES: Just to touch on it,  
21 you give the ability for I think it's for  
22 showing a finding, but I guess that takes

1 place during the hearing. Like if a  
2 protestant comes forward with something that  
3 wasn't listed, exhibits, part of the PIF, and  
4 upon examination the Board said, oh, that's  
5 fine, that can be allowed. That is a bit of  
6 an out there.

7 I do have this concern that,  
8 generally speaking, we're volunteers. ANC  
9 commissioners are volunteers in their  
10 communities. People on civic associations and  
11 the individuals are all -- I think they're all  
12 generally trying to make their neighborhoods  
13 better.

14 So we're not professionals. We  
15 don't particularly want to go to protest  
16 hearings, so therefore we develop our evidence  
17 late often because the reality comes that,  
18 yeah, you're actually going to have to go to  
19 a hearing.

20 So it's just hard the last week or  
21 two before a hearing to make sure you can  
22 develop the necessary evidence. And some of

1 it is quite benign, like photographs or  
2 perhaps video or something of that nature.  
3 It's something that anybody could witness at  
4 any time.

5 So it just seems unnecessarily  
6 harsh to have to have it that far in advance  
7 when it's something that is just anything that  
8 anybody can see in the public unless, you  
9 know, that's not a universal statement, but --

10 CHAIR MILLER: Okay.

11 MR. JAMES: -- photographs that  
12 help the Board understand what's going on or  
13 photographs that show something that, an  
14 expansion of premise, say, that we didn't know  
15 had happened and then all of a sudden we  
16 realized, oh, that's never been licensed or  
17 something.

18 I'm just trying to think of things  
19 that could be beneficial to a protestant case.  
20 And I might try to suggest some softening of  
21 that part because I do understand the Board  
22 wants it to be more professional in a sort of

1 even-Steven kind of --

2 MEMBER ALBERTI: Mr. James, I

3 really appreciate this but I think --

4 CHAIR MILLER: Yes.

5 MEMBER ALBERTI: I'm kind of losing

6 the focus here, so --

7 CHAIR MILLER: Right, okay.

8 MEMBER ALBERTI: What I would

9 suggest is maybe you kind of write something

10 to the Board --

11 MR. JAMES: Sure.

12 MEMBER ALBERTI: -- because I'm not

13 really -- and I know you're talking off, just

14 off the top of your head.

15 CHAIR MILLER: Right. And I asked

16 the question. I'm sorry.

17 MEMBER ALBERTI: And that's

18 difficult. I understand. So I think it would

19 be better if you submitted comments. And I'll

20 get it more concisely then. Thank you.

21 CHAIR MILLER: Okay, I just wanted

22 to say that, and we can move on because that

1       isn't specific to the rules. And I just  
2       wanted to kind of check where you were. But I  
3       don't say we're looking for something more  
4       professional. I just say we're looking for  
5       parties to be on notice of what the issues are  
6       with those cases. Yes?

7               MEMBER SILVERSTEIN: Mr. James, I  
8       think that we heard what Ms. Nichols had to  
9       say about sometimes people being here until  
10      early hours of the morning or giving great  
11      amounts of their own time. You're talking  
12      about volunteers. But the other side's paying  
13      a lot of money and the other side has often  
14      their lives involved and their fortunes  
15      involved in this.

16             So this is -- both sides have a lot  
17      at stake. One of the things that Mr. Woodson  
18      was talking about, I want to know how this  
19      would impact you, is if the licensee were to  
20      say at this point we're fine with the protest  
21      report and we will reserve our comments for  
22      the rebuttal and we would like the protestants

1 to talk about specifically what their problems  
2 are first so that we don't deal with parking  
3 if they don't think parking's an issue, so  
4 that we don't deal with what the community,  
5 how we're providing charity to the community  
6 if that's not an issue.

7 Do you have a problem with that,  
8 where the licensee would simply say we're  
9 going to sit on the protest report, we're  
10 going to let that speak for us and then we'll  
11 rebut whatever else?

12 MR. JAMES: I do. I have a very  
13 big problem with it because the protest report  
14 is white bread, quite honestly. No offense.

15 MEMBER SILVERSTEIN: Okay, it never  
16 -- that's why I'm asking.

17 MR. JAMES: It never finds a  
18 problem. I'm not trying to be insulting but  
19 it needs to straddle that line. It can't be -  
20 - it can't make our case for us unless --

21 MEMBER SILVERSTEIN: Now wait a  
22 minute, I'm saying they're going to go without

1 -- then you go and say what your problems are  
2 and then they come back and rebut or address  
3 what you say those problems are.

4 MR. JAMES: Why should the Board  
5 create a document using its agents, paid for  
6 by tax payer money, to have a document that  
7 refutes our protest?

8 MEMBER SILVERSTEIN: So you think  
9 that the current system is fine?

10 MR. JAMES: I know it's there. And  
11 I said earlier the value of the Board to  
12 familiarize yourself with the surroundings,  
13 that's good. The many visits are still  
14 troubling to me because I walk my neighborhood  
15 different times and I see things. And they're  
16 never reflected. They're just never reflected  
17 in those visits.

18 MEMBER SILVERSTEIN: It doesn't  
19 have in there the investigative history of the  
20 place? It doesn't have in there the  
21 violations? It doesn't have in there those  
22 types of things?

1 MR. JAMES: It does. It doesn't  
2 have the reports. It has the listing on them.  
3 Now I'm assuming the Board knows the cases but  
4 I mean you cover so much ground with so many  
5 different establishments throughout the city  
6 over time that I'm not sure you can -- just  
7 because it's listed as part of the  
8 investigative history that you know, oh, yeah,  
9 Establishment X, that had the three knifings  
10 in the three-year period.

11 I just don't know that you know  
12 that. Now if we wanted to talk about it we've  
13 got the investigator there. We can ask them  
14 those questions. But --

15 MEMBER SILVERSTEIN: We're talking  
16 passed each other.

17 MR. JAMES: I don't know.

18 MEMBER SILVERSTEIN: I think we  
19 are. MR. JAMES: Maybe. I always feel  
20 like this is --

21 MEMBER ALBERTI: Mr. James, really,  
22 I think Mr. Silverstein's -- what he wanted



1 from you was the process. I don't think he  
2 was discussing how well we do in protest  
3 reports. I think he was discussing how  
4 they're used.

5 MR. JAMES: Right.

6 MEMBER ALBERTI: And that's what I  
7 think you want to direct your comments on.

8 MR. JAMES: Well, I guess that's  
9 where I'll still fall back to my white bread  
10 comment. I'm sorry if that's offensive to  
11 anybody but it's -- it seems to unfairly  
12 advantage the applicant to have official Board  
13 --

14 MEMBER SILVERSTEIN: No, we are  
15 clearly talking passed each other.

16 MR. JAMES: No, no, I think that's  
17 part of the whole evidentiary chain. I mean,  
18 the whole point of having a hearing is to hear  
19 what are the problems.

20 MEMBER SILVERSTEIN: Sure.

21 MR. JAMES: And if you get to see  
22 something that says there are no problems --

1 (Simultaneously speaking)

2 MEMBER ALBERTI: Mr. James, I think  
3 you answered his question. You certainly, as  
4 I understood it, you answered his question.  
5 And I appreciate that. Thank you.

6 CHAIR MILLER: Mr. Jones? Do you  
7 have a question?

8 MEMBER JONES: Unfortunately yes.  
9 I'm just trying to make sure it's clear.  
10 Forget the investigative report in its  
11 entirety, all right. Focus on just what  
12 Member Silverstein's question regarding the  
13 sequence of events. Do you -- and I'm totally  
14 against it, so, but I'm really just trying to  
15 make sure we get honest feedback from you  
16 without me being biased by my own perceptions.

17 So given that, given the sequence,  
18 would you have a problem with going first in  
19 the presentation of evidence to substantiate  
20 or support your side of the case as a  
21 protestant which is different than the process  
22 now where the licensee goes first, then you,

1 as the protestant group follows on?

2 And I think that's really the crux  
3 of what Member Silverstein was looking to  
4 focus on. Forget the investigative report as  
5 having weight or not having weight. It's  
6 really just the process issue and I think  
7 that's really what he was trying to get, what  
8 I understood he was trying to get a  
9 clarification on from you as a, often a member  
10 of the protestant side of the table. I think  
11 that he was just trying to get your  
12 perspective. That there, do you understand  
13 what I'm saying?

14 MR. JAMES: Well, I'll just preface  
15 it but the Board knows I'm not a lawyer.

16 MEMBER JONES: No, exactly.

17 MR. JAMES: And I try to get the  
18 rudiments of what's supposed to happen. But I  
19 can't say that I can see an advantage one way  
20 or the other.

21 MEMBER JONES: Cool, and that's --  
22 perfectly acceptable answer, yes.

1 MR. JAMES: I'm going by the code,  
2 what the code says is the order and --

3 MEMBER JONES: You're comfortable  
4 with that?

5 CHAIR MILLER: Where is that? Oh,  
6 it doesn't say.

7 MEMBER SILVERSTEIN: It doesn't say  
8 what the order is, so.

9 CHAIR MILLER: I don't think the  
10 statute says it.

11 MEMBER JONES: You're comfortable  
12 with what you've been experiencing?

13 MR. JAMES: Actually the code --  
14 you may be right. I apologize.

15 CHAIR MILLER: It may be in the  
16 regs. We're looking at the regs.

17 MR. JAMES: Yes.

18 (Simultaneously speaking)

19 CHAIR MILLER: Yes, sure.

20 MEMBER ALBERTI: Actually, I have  
21 a question for Mr. Grossman, so are we moving  
22 on?

1 CHAIR MILLER: Yes.

2 MEMBER ALBERTI: Or Ms. Nichols?

3 I don't know who you want to go first.

4 CHAIR MILLER: Well, I was going to  
5 go in the order that they testified. Would  
6 that be all right?

7 MEMBER ALBERTI: Okay, great.

8 Great, then I'll hold my question.

9 CHAIR MILLER: Will you hold it?

10 MEMBER ALBERTI: Sure.

11 CHAIR MILLER: Does anybody have a  
12 question for Ms. Nichols?

13 MEMBER ALBERTI: No.

14 CHAIR MILLER: Well, all right. I  
15 will. MS. NICHOLS: Same

16 question for me that you had for --

17 CHAIR MILLER: Exactly. So and I  
18 just want to -- I mean, I have an open mind  
19 for this at this point. And it's funny  
20 because this is not Mr. Woodson's regulations.  
21 I mean, they're not regulations, not subject  
22 to these regulations but we kind of opened up

1       this dialogue.

2               So that being said, I also want to say I  
3       want to set in your kind of initial reaction  
4       about as, I sit through those hearings, by the  
5       time the protestants come on it's usually  
6       late. And it's unfortunate and I see them  
7       losing people because some people are old.

8               And so I see that as one advantage  
9       where the focus usually is what the  
10      protestants are complaining about or -- so  
11      what is your initial feeling? Because I know  
12      you haven't thought about this ahead of time  
13      or whatever.

14              MS. NICHOLS: Well, I have a question  
15      listening to you because you were at the  
16      hearing and heard Mr. Woodson. It sounded as  
17      if Mr. Woodson is saying something different  
18      today than he did at the hearing.

19              At the hearing he wanted to change  
20      the burden of proof. Today what I heard was  
21      the proof is on the record as a whole and that  
22      the order could be changed to be beneficial to

1 everyone. And I like that.

2 The burden of proof does get beyond  
3 my legal training but I felt in that case  
4 there was so much cloudy stuff. We spent time  
5 trying to tease stuff from the owner.

6  
7 (Simultaneously speaking)

8 MS. NICHOLS: Okay, in terms of  
9 process maybe if I get more experience I would  
10 have asked for more time because of certain  
11 things that had happened which, I gather, you  
12 could grant if you felt that -- because  
13 earlier it was can we cut it to 60 minutes.  
14 Well, sometimes, and I can learn -- but  
15 anyway.

16 So there were definitely aspects of  
17 what he said that I liked. Now this sounds -  
18 - and that was why earlier in my testimony I  
19 said maybe we need just a hearing on hearings  
20 to have more people hear the attorneys,  
21 business.

22 CHAIR MILLER: Maybe we can do that

1 but we've kind of been using this proceeding  
2 like that a little bit to get your reaction  
3 because you have gone through these hearings  
4 and you know how they've affected you and what  
5 may or may not sound a good idea or not.

6 But we're also going to leave the  
7 record open for you to submit more in writing.  
8 And we'll see but if there's anything else you  
9 want to say today about that or anything else  
10 --

11 MS. NICHOLS: Well, if I understood  
12 what he was saying, that he was making a  
13 different suggestion today than what we heard.  
14 I liked the way he said it today. I  
15 understood it better. It fit better with my  
16 experience and so that the burden of proof  
17 would still be on the applicant but the order  
18 could be different for establishing that.

19 CHAIR MILLER: And I think the  
20 focus would be more narrower onto the issues  
21 that the protestants raise or the investigator  
22 raises, yes. Okay.



1           Okay, thank you very much. Is there  
2           anybody else here who would like to testify on  
3           these regs?

4                   MEMBER JONES: Is Board Member  
5           Silverstein in the audience that may want to -

6           -           MEMBER ALBERTI: Maybe we should  
7           ask if he'd like to come up and speak to us.

8                   MEMBER JONES: Would you like to  
9           come up and speak to the Board?

10                   CHAIR MILLER: Well I think we have  
11           a quorum to close the hearing, I think. Okay,  
12           that concludes our hearing this morning on the  
13           rulemakings for the proposed regulations  
14           related to technical and administrative  
15           rulemaking and -- what's the other one -- the  
16           technical rulemaking. Okay, and I understand  
17           that the record will remain open for an  
18           unspecified period of time at this point.  
19           Okay, so we are adjourned.

20                   (Whereupon, the hearing in the  
21           above-entitled matter was concluded at 12:54  
22           p.m.)

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